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Attorneys for Defendant
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VENUS ANGELIQUE HISAW,

Plaintiff,

v.

UNITED STATES; and DOES 1-100, inclusive,

Defendants.

Case No. 08cv1214-WQH (RBB)

**NOTICE OF MOTION AND MOTION
TO DISMISS COMPLAINT OR, IN
THE ALTERNATIVE, FOR SUMMARY
JUDGMENT**

DATE: October 14, 2008

TIME: 11:00 a.m.

CTRM: 4

[NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT]

Hon. William Q. Hayes

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on October 14, 2008 at 11:00 a.m., or as soon thereafter as counsel may be heard, in the Courtroom of the Honorable William Q. Hayes, Defendant United States of America, through its attorneys of record, Karen P. Hewitt, United States Attorney, and Ernest Cordero, Jr., Assistant U.S. Attorney, will, and now does, bring its Motion to Dismiss Complaint or, in the Alternative, for Summary Judgment pursuant to Rules 12(b)(1), (6) and 56 of the Federal Rules of Civil Procedure. There will be no oral argument unless requested by the Court.

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1 This motion is based upon this Notice of Motion and Motion, the accompanying
2 Memorandum of Points and Authorities, the Declaration of Donna L. Reynolds and the files
3 and records of this case.

4 DATED: August 28, 2008

KAREN P. HEWITT
United States Attorney

/s Ernest Cordero, Jr.

7 ERNEST CORDERO, JR.
Assistant U.S. Attorney

8 Attorneys for Defendant
9 United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VENUS ANGELIQUE HISAW,

Plaintiff,

v.

UNITED STATES; and DOES 1-100, inclusive,

Defendants.

Case No. 08cv1214 JM (BLM)

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893. I am not a party to the above-entitled action. I have caused service of:

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT AND DECLARATION OF DONNA L. REYNOLDS IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT.

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Michael F. Avila, Esq.
Daniel A. De Soto
Avila & Peros, LLP
2101 Rosecrans Avenue, Suite 5260
El Segundo, CA 90245
mfa@a-plaw.com
jpk@a-plaw.com
representing Plaintiffs

Charles Viviano, Esq.
The Viviano Law Firm
3333 Camino Del Rio South, Suite 220
San Diego, CA 92108
trials@vivianolaw.org
representing County of Imperial and Imperial County Sheriff's Department

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

Shannon Duane Eifert, in Pro Per
W6783 Center Valley Road
Shiocton, Wisconsin 54170

1 the last known addresses, at which place there is delivery service of mail from the United
2 States Postal Service.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on August 28, 2008.

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7 Y. Reyes
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Attorneys for Defendant
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VENUS ANGELIQUE HISAW,

Plaintiff,

v.

UNITED STATES; and DOES 100, inclusive,
Defendants.

Case No. 08cv1214-WQH (RBB)

**DECLARATION OF DONNA L.
REYNOLDS IN SUPPORT OF
MOTION TO DISMISS COMPLAINT
OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT**

DATE: October 14, 2008
TIME: 11:00 a.m.
CTRM: 4

Hon. William Q. Hayes

I, Donna L. Reynolds, declare as follows:

I am a paralegal employed by the Department of the Interior. Since October 19, 2003, I have worked in the Office of the Regional Solicitor, Pacific Southwest Region, located at 2800 Cottage Way, E-1712, Sacramento, California 95825. The office has responsibility for receiving administrative claims in excess of \$2,500.00 from client agencies including the Bureau of Land Management (BLM) and adjudicating those claims for the Department of the Interior. As a paralegal in the Regional Solicitor's Office, I am responsible for logging in all administrative claims received by this office. I also maintain the office files for all administrative claims and monitor the claims through the adjudication process. As part of my duties, I also prepare and send correspondence to claimants and attorneys regarding the disposition of claims.

1 I have personal knowledge of all facts contained in this declaration. If called upon to
2 do so, I could and would competently testify thereto.

3 1. On or about January 19, 2007, Plaintiff Venus Angelique Hisaw filed an
4 administrative claim with BLM alleging negligence with respect to BLM's staffing, maintenance
5 and supervision of the Imperial Sand Dunes Recreation Area ("ISDRA") on December 25,
6 2005, the date of a fatal accident involving Kyle Przysiecki. (A true and correct copy of the
7 administrative claim (hereinafter, "first administrative claim") is attached as Exhibit 1 to this
8 declaration.) As part of my duties, I personally was responsible for logging in the claim at the
9 Regional Solicitor's Office. Plaintiff filed the claim in her own name. Nowhere in the claim is
10 there any reference to an attorney representing Plaintiff.

11 2. In her first administrative claim, Plaintiff listed her address as 16302 Rhone
12 Lane, Huntington Beach, CA 92647. On February 2, 2007, BLM sent Plaintiff a letter denying
13 the claim via certified mail. (A true and correct copy of the denial letter is attached as Exhibit
14 2 to this declaration.) The letter was sent to the same address listed in Plaintiff's first
15 administrative claim.

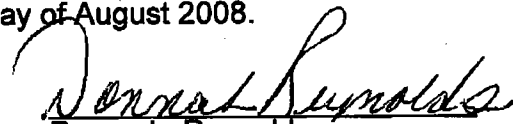
16 3. On or about February 26, 2007, the Postal Service returned the denial letter to
17 BLM with an explanation that the letter had been unclaimed. The documentation from the
18 Postal Service appears to indicate that notice of the letter was left at Plaintiff's residence on
19 February 5 and February 15, 2007 before the letter was returned to BLM on February 26,
20 2007. I personally was responsible for placing the returned denial letter in the office files. (A
21 true and correct copy of the documentation received from the Postal Service indicating that
22 the letter was unclaimed is attached as page 3 to Exhibit 2 of this declaration.)

23 4. Although Plaintiff was not represented by an attorney when she filed her first
24 administrative claim, I sent a copy of the denial letter to Michael Avila of the Avila & Peros firm
25 because he was the attorney representing the Estate of Kyle Przysiecki and might be in
26 contact with Plaintiff. (Attached as Exhibit 3 is the office copy of the denial letter I sent to Mr.
27 Avila on March 2, 2007 with my handwritten notation indicating that it was sent to him.) To my
28 knowledge, BLM did not receive any communications from Mr. Avila in response to the letter.

1 The office file with respect to this administrative claim does not reflect any communications
2 from Mr. Avila around the time I sent him a copy of the letter. Our office practice would be to
3 file in the administrative claim all communications received from claimants and their attorneys.

4 5. On December 21, 2007, BLM received a second administrative claim from
5 Plaintiff which was presented to BLM by Avila & Peros, LLP on Plaintiff's behalf. (A true and
6 correct copy of the second administrative claim is attached as Exhibit 4.) BLM had not acted
7 on the second administrative claim prior to July 1, 2008.

8 I declare under penalty of perjury under the laws of the United States that the foregoing
9 is true and correct. Executed on this 27th day of August 2008.

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11 Donna L. Reynolds
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EXHIBIT

“1”

TS-1756

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: United States Bureau of Land Management c/o United States Department of the Interior ATTN: Donna L. Reynolds, Office of the Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Venus Angelique Hisaw - Claimant 16302 Rhone Lane Huntington Beach, CA 92647		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 12/20/1964	5. MARITAL STATUS single	6. DATE AND DAY OF ACCIDENT 12/25/2005	7. TIME (A.M. OR P.M.) 1:00 p.m.	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) Claimant's 15 year-old son Kyle Przysiecki was riding a motorcycle in the Imperial Sand Dunes Recreational Area, in Glamis, California, which is federal land designated for recreational use by off-highway vehicles. Due to the United States Bureau of Land Management's failure to properly maintain the area to protect the safety of the public for whom the land is openly made available, an unsafe condition was created where other riders are not able to see each other until it is too late to avoid collisions. As a result of the dangerous condition, another off-road vehicle driven by Shannon Duane Eifert collided with the Claimant's son, causing serious chest and abdominal injuries to Claimant's son resulting in death. The United States Bureau of Land Management also failed to adequately staff and supervise the area resulting in a lack of timely and adequate medical care being available to save the life of the Claimant's son following the collision.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). No property damage is being claimed.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.) No property damage is being claimed.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. The cause of Claimant's son Kyle Przysiecki's death is attributed to "chest and abdominal injuries" and "blunt force trauma" due to the collision.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Shannon Bargsten Matt Hove		802 S. Clemintine St., Anaheim, CA 92805 2210 S. Lewis St., Anaheim, CA 92805			
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE \$0.00	12b. PERSONAL INJURY \$0.00	12c. WRONGFUL DEATH \$25,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$25,000,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 		13b. Phone number of person signing form (714) 873-0107		14. DATE OF SIGNATURE 1/16/07	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)			

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

Not applicable.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)

Not applicable.

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

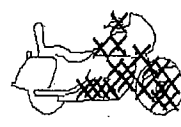
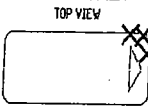
This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501-et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

SPECIAL CONDITIONS FATAL OFF-HIGHWAY		NUMBER INJURED 0	HIT & RUN FELONY <input type="checkbox"/>	CITY UNINCORPORATED		JUDICIAL DISTRICT BRAWLEY		LOCAL REPORT NUMBER 05-12-53			
		NUMBER KILLED 1	HIT & RUN MISDEMEANOR <input type="checkbox"/>	COUNTY IMPERIAL		REPORTING DISTRICT BEAT 906					
LOCATION	COLLISION OCCURRED ON: IMPERIAL SAND DUNES RECREATION AREA					MO 12/25/2005	DAY 1300	YEAR 2005	NCIC # 9625	OFFICER I.D. 016842	
	MILEPOST INFORMATION:					DAY OF WEEK SUNDAY	TOW AWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	PHOTOGRAPHS BY: <input type="checkbox"/> NONE OFFICER DAVIDSON #17011			
	AT INTERSECTION WITH: <input checked="" type="checkbox"/> OR: 2 MILE(S) SOUTH OF SR-78					STATE HWY REL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
PARTY 1	DRIVER'S LICENSE NUMBER NONE		STATE CA	CLASS U	AIR BAG P	SAFETY EQUIP. W	VEH. YEAR 2003	MAKE / MODEL / COLOR HONDA CRF 450 RED		LICENSE NUMBER X07V40	STATE CA
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) KYLE PRZYSIECKI					OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER BARGSTEN, SHANNON					
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 1723 BEVERLEY DR.					OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER 802 S. CLEMINTINE ST. ANAHEIM CA 92805					
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP ORANGE CA 92868					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input checked="" type="checkbox"/> OTHER RELEASED TO MATTHEW HOVE					
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BLU	HEIGHT 6-00	WEIGHT 180	BIRTHDATE Mo 4/8/1990 Day Year	RACE W	PRIOR MECH. DEFECTS <input checked="" type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE			
OTHER <input type="checkbox"/>	HOME PHONE (714)634-2406		BUSINESS PHONE NONE		VEHICLE IDENTIFICATION NUMBER: JH2PE05303M108819						
INSURANCE CARRIER NONE		POLICY NUMBER		VEHICLE TYPE 02		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA 			
DIR OF TRAVEL S		ON STREET OR HIGHWAY OPEN DESERT		SPEED LIMIT		CA _____ DOT _____					
PARTY 2	DRIVER'S LICENSE NUMBER E163765155249		STATE MI	CLASS F	AIR BAG P	SAFETY EQUIP. P	VEH. YEAR 2004	MAKE / MODEL / COLOR BUCKSHOT X5 ORG/BLK		LICENSE NUMBER NONE	STATE
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) SHANNON DUANE EIFERT					OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER					
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 17804 120TH AVE.					OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER					
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP NUNICA MI 49448					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER TOWED AWAY BY DRIVER					
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BLU	HEIGHT 6-01	WEIGHT 210	BIRTHDATE Mo 3/29/1976 Day Year	RACE W	PRIOR MECHANICAL DEFECTS <input checked="" type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE			
OTHER <input type="checkbox"/>	HOME PHONE (616)837-7898		BUSINESS PHONE (616)502-3090		VEHICLE IDENTIFICATION NUMBER: 122559315						
INSURANCE CARRIER NONE		POLICY NUMBER		VEHICLE TYPE 42		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA TOP VIEW 			
DIR OF TRAVEL N		ON STREET OR HIGHWAY OPEN DESERT		SPEED LIMIT		CA _____ DOT _____					
PARTY 3	DRIVER'S LICENSE NUMBER		STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR		LICENSE NUMBER HDQ	STATE
DRIVER <input type="checkbox"/>	NAME(FIRST, MIDDLE, LAST)					OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER		CALTRANS COURT			
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS					OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER		CO. RD.			
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER MILITARY					
BICY- CLIST <input type="checkbox"/>	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE Mo Day Year	RACE	PRIOR MECHANICAL DEFECTS <input type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE			
OTHER <input type="checkbox"/>	HOME PHONE		BUSINESS PHONE		VEHICLE IDENTIFICATION NUMBER: CHP						
INSURANCE CARRIER		POLICY NUMBER		VEHICLE TYPE		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA			
DIR OF TRAVEL		ON STREET OR HIGHWAY		SPEED LIMIT		CA _____ DOT _____					
CAL-T _____ TCP/PSC _____ MC/MX _____											
REPAIRER'S NAME D. CHEAK 016842		DISPATCH NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A		REVIEWER'S NAME RM BIRD 964		DATE REVIEWED 1/26/6					

STATE OF CALIFORNIA
INJURED / WITNESSES / PASSENGERS
CHP 555 CARS Page 3 (Rev 1-03) OPI 061

DATE OF COLLISION (MO. DAY YEAR) 12/25/2005				TIME(2400) 1300		NCIC # 9625		OFFICER I.D. 016842				NUMBER 05-12-53							
WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED		
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BICYCLIST	OTHER							
<input type="checkbox"/> #	<input type="checkbox"/>	15	M	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1	1	P	W	1		
NAME / D.O.B. / ADDRESS KYLE PRZYSIECKI (04/08/1990) 1723 BEVERLEY DR. ORANGE CA 92868																			
TELEPHONE (714)634-2406																			
(INJURED ONLY) TRANSPORTED BY: IMPERIAL COUNTY CORONER																			
TAKEN TO: IMPERIAL COUNTY CORONER																			
DESCRIBE INJURIES: FATAL INTERNAL TRAUMA, PRONOUNCED DEAD AT THE SCENE BY DR. REESE FROM PIONEER MEDICAL CENTER AT 1108 HOURS, CORONER CASE #C-05-238.																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
<input type="checkbox"/> #	<input checked="" type="checkbox"/>	29	F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	3	P	P	0		
NAME / D.O.B. / ADDRESS TRISHA EIFERT (06/22/1976) 17804 120TH AVE. NUNICA MI 49448																			
TELEPHONE (616)837-7898																			
(INJURED ONLY) TRANSPORTED BY:																			
TAKEN TO:																			
DESCRIBE INJURIES:																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
<input checked="" type="checkbox"/> # 1	<input type="checkbox"/>	20	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS MATTHEW TODD HOVE (02/25/1985) 2210 S. LEWIS ST. ANAHEIM CA 92805																			
TELEPHONE (714)939-9878																			
(INJURED ONLY) TRANSPORTED BY:																			
TAKEN TO:																			
DESCRIBE INJURIES:																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
<input checked="" type="checkbox"/> # 2	<input type="checkbox"/>	39	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS RICHARD OTTO RIECK (01/30/1966) 9360 EVERGREEN DR. TRAVERSE CITY MI 49684																			
TELEPHONE (231)275-3430																			
(INJURED ONLY) TRANSPORTED BY:																			
TAKEN TO:																			
DESCRIBE INJURIES:																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
<input checked="" type="checkbox"/> # 3	<input type="checkbox"/>	54	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS DAVID WOLFE (09/15/1951) 1302 MILLBURY RD. NORTHWOOD OH 43619																			
TELEPHONE (419)836-7600																			
(INJURED ONLY) TRANSPORTED BY:																			
TAKEN TO:																			
DESCRIBE INJURIES:																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
NAME / D.O.B. / ADDRESS																			
TELEPHONE																			
(INJURED ONLY) TRANSPORTED BY:																			
TAKEN TO:																			
DESCRIBE INJURIES:																			
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																			
PREPARER'S NAME J. D. CHEAK				I.D. NUMBER 016842				MO. DAY YEAR 12/25/2005				REVIEWER'S NAME				MO. DAY YEAR			

STATE OF CALIFORNIA

SKETCH DIAGRAM

CHP 555 Page 4 (Rev. 8-97) OPI 042

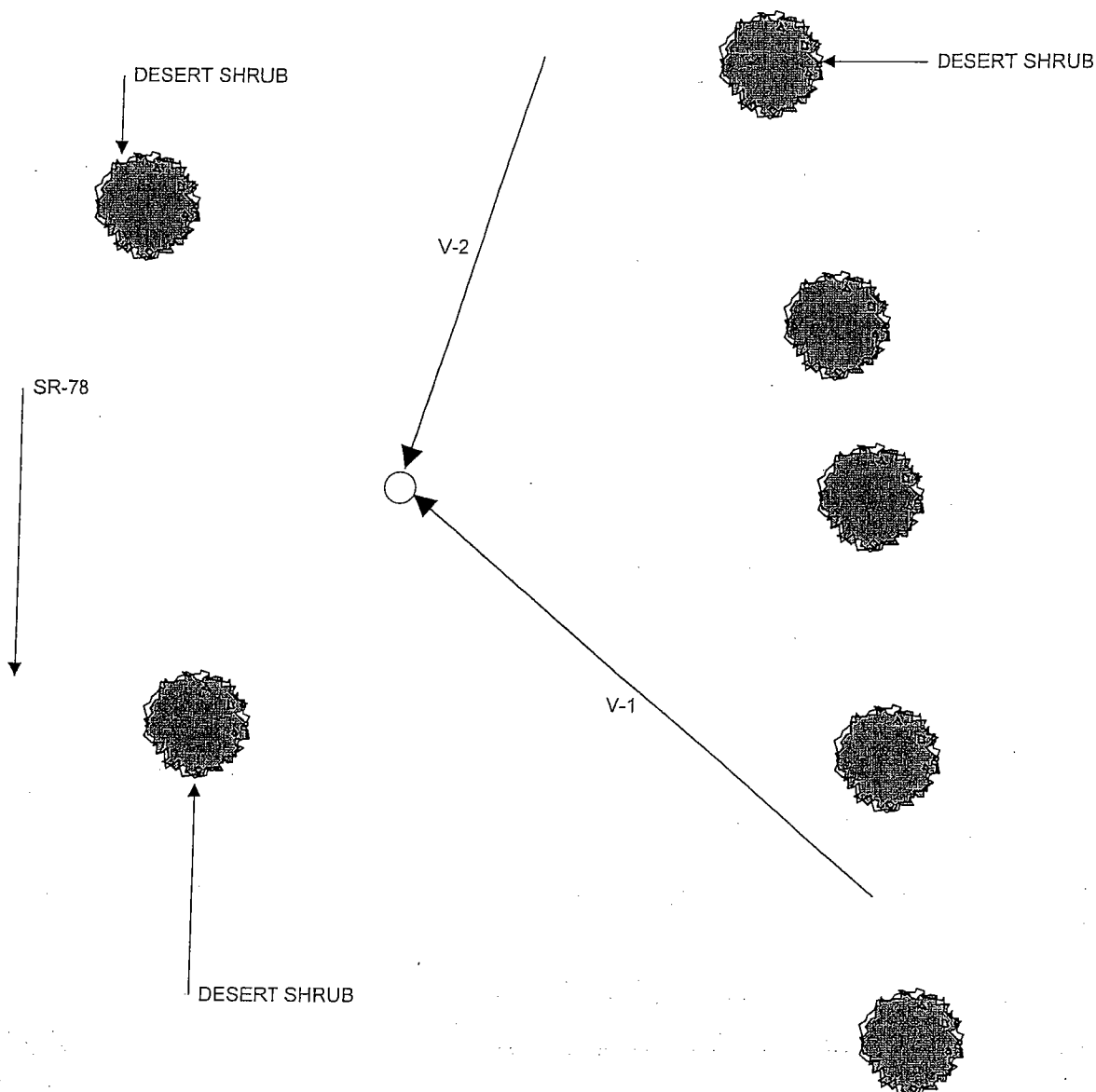
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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
12/25/2005	1300	9625	016842	05 12 53

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE=)

IMPERIAL SAND DUNES
RECREATIONAL AREA
(GLAMIS)

OPEN DESERT



PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M. D. DAVIDSON	017011	12/25/2005		

STATE OF CALIFORNIA
FACTUAL DIAGRAM

CHP 555 Page 4 (Rev. 8-97) OPI 042

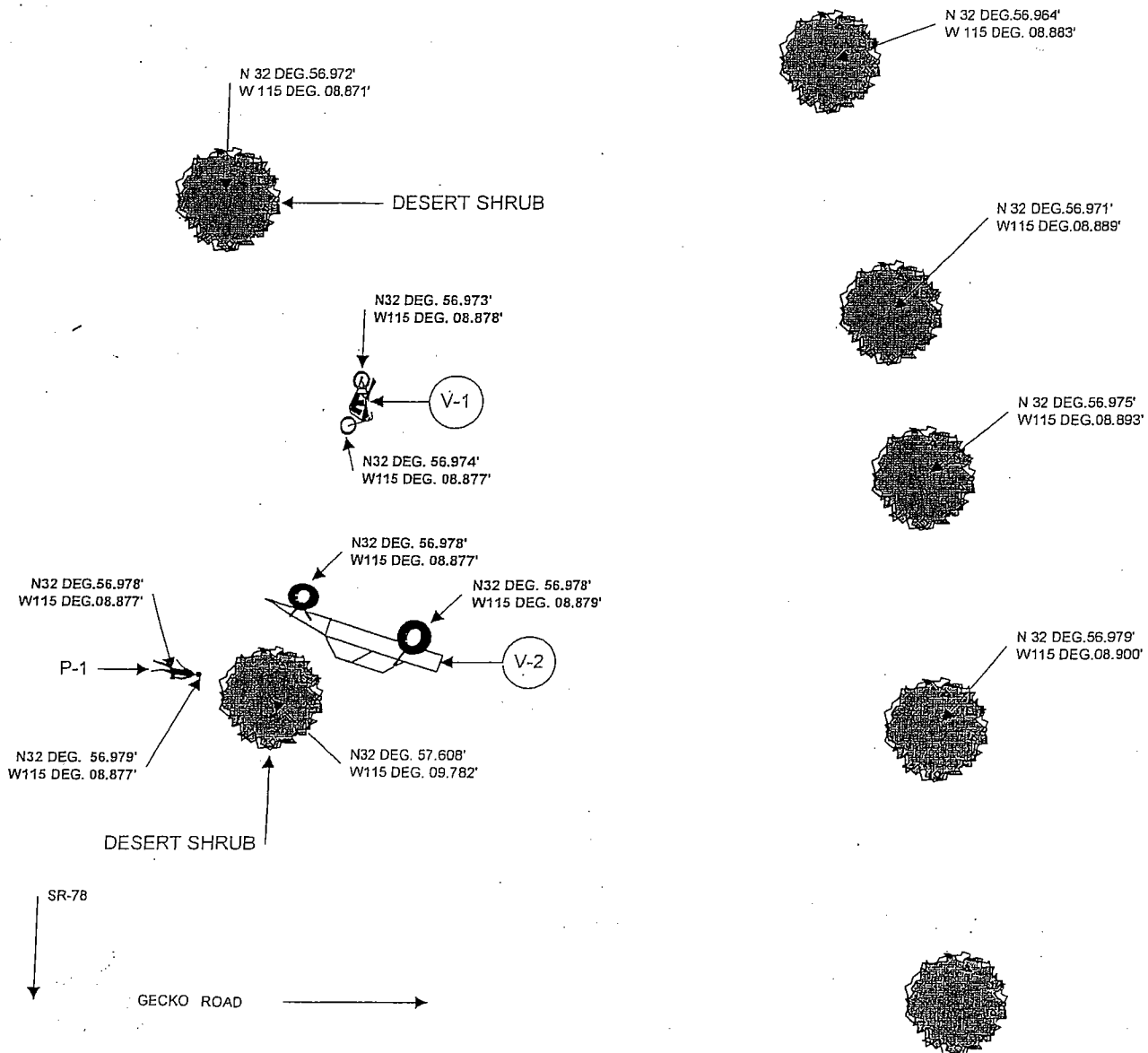
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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
12/25/2005	1300	9625	016842	05 12 53

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE=)

IMPERIAL SAND DUNES
RECREATIONAL AREA
(GLAMIS)

OPEN DESERT



PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M. D. DAVIDSON	017011	12/25/2005		

NARRATIVE/SUPPLEMENTAL

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 **PHYSICAL EVIDENCE LEGEND:**

2

3 A STATION LINE WAS NOT UTILIZED DUE TO THE SURROUNDING OPEN DESERT
4 TERRAIN. ALL PHYSICAL EVIDENCE LOCATIONS WERE OBTAINED BY GLOBAL
5 POSITIONING SATELLITE (GPS) COORDINATES.

6

7

8 **VEHICLE POINTS OF REST:**

9

10

11 V-2 RR- N 32 DEGREES 56.978'
12 W115 DEGREES 08.877'

13

14 RF- N 32 DEGREES 56.978'
15 W115 DEGREES 08.879'

16

17 V-1 REAR- N 32 DEGREES 56. 973'
18 W 115 DEGREES 08.878'

19

20 FRONT- N 32 DEGREES 56. 974'
21 W 115 DEGREES 08.877'

22

23 PARTY #1 HEAD- N 32 DEGREES 56.978'
24 W 115 DEGREES 08.877'

25

26 GROIN- N 32 DEGREES 56.979'
27 W 115 DEGREES 08.877'

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 FACTS**2 NOTIFICATION**

3

4 I received a call from El Centro Communications Center of a fatal traffic collision on Gecko
5 Rd. south of SR-78 at 1400 hours. I responded from the CHP/El Centro office and arrived on
6 scene at 1455 hours. All times, speeds, and measurements are approximate. All measurements
7 were obtained by global positioning satellite (GPS).

8

9 SCENE

10

11 The traffic collision occurred in the Imperial Sand Dunes Recreational Area (Glamis) which
12 is federal land designated for recreational use by off highway vehicles. The collision occurred
13 south of SR-78 and east of Gecko Rd. in the open desert at GPS location N 32 degrees 56.974
14 and W 115 degrees 08.876. There are no designated lanes for traffic and there is no set speed
15 limit. The open desert has small bumps/dips approximately 1.5 feet in depth. The path surface is
16 composed of loose sand in this area. The area contains desert shrubs which are approximately 5
17 feet each in height. The weather was sunny, clear and the roadway was dry at the time of the
18 collision.

19

20 PARTIES/VEHICLES

21

22 **Party #1 (Przysiecki)** was located lying on his back facing in a westerly direction and was
23 pronounced dead at the scene by Dr. Reese at 1408 hours. Party #1 was identified by
24 Witness #1 (Hove). Party #1 was identified as the driver of Vehicle #1 by Witness #1 and
25 Party #2 (Eifert). P-1 did not have a helmet on upon my arrival it was taken off so paramedics
26 could perform first aid. P-1 did have a full face helmet, but the DOT sticker and the make were
27 painted over. The helmet contained scrapes along the top.

28

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 PARTIES/VEHICLES CONTINUED

2

3 **Vehicle #1 (Honda)** was located lying on its left side on the sand facing in an easterly
 4 direction. Vehicle #2 sustained moderate damage to the front tire, handlebars, both foot pegs,
 5 front axle and crankcase. A white whip with an orange flag was located along the left rear of V-1.
 6 While Witness #1 was loading V-1 into the back of his truck, I observed him click down a total of
 7 three times on the clutch to get V-1 in neutral. I was unable to determine what gear V-1 was in
 8 prior to the collision, due to W-1 moving the clutch prior to me inspecting V-1.

9

10 **Party #2 (Eifert)** was located sitting on the sand just east of the traffic collision scene. P-2
 11 was identified by his Michigan Driver License. P-2 was identified as the driver of V-2 by his own
 12 admission, P-2 is the registered owner of V-2 and statement of his passenger.

13

14 **Vehicle #2 (Buckshot)** was located on its left side in the sand facing in an easterly
 15 direction. V-2 sustained minor damage to the left front, left headlight and the left front shock was
 16 broken. The seatbelts were inspected and found to be in good working order. A white whip with a
 17 black and white flag was located along the top of V-2. No prior mechanical defects were noted or
 18 claimed.

19

20 24 HOUR HISTORY

21

22 I contacted Party #1's (Przysiecki) stepfather at the scene and he did not remember P-1's
 23 full activities from the prior 24 hours. P-1 went to his aunt's house in Orange, Ca. on 12-24-05 at
 24 5:00 P.M. and was there until 8:30 P.M. P-1 spent the night at his father's house and woke up at
 25 5:30 A.M. They left to the Sand Dunes at that time. They stopped at the Denny's in Moreno
 26 Valley and had breakfast. They arrived at the Imperial Sand Dunes Recreational Area at 10:30
 27 A.M. and P-1 began riding at 11:00 A.M. P-1 was very experienced and had been riding since he
 28 was three years old.

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1 PHYSICAL EVIDENCE

2

3 See Physical Evidence Page.

4

5 AGENCIES INVOLVED

6

7 California Highway Patrol (CHP) El Centro Area

8 2331 Highway 86

9 Imperial, Ca. 92251

10 (760) 482-2500

11

12 Officer M. Davidson #17011 (Prepared the factual diagram and took photographs).

13

14 Imperial County Sheriff (ICSO) Central Division

15 328 Applestill Rd.

16 El Centro, Ca. 92243

17 (760) 339-6311

18

19 Deputy Kelley #588

20 Deputy Marin #611

21 Sgt. Duran #848

22

23

24

25

26

27

28

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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1 AGENCIES INVOLVED CONTINUED

2

3 Gold Cross Paramedic #2640

4 905 S. Imperial Ave.

5 El Centro, Ca. 92243

6 (760) 353-3380

7

8 Paramedic S. Holt

9 Paramedic J. Cerda

10

11 Pioneers Memorial Hospital

12 207 Legion Rd.

13 Brawley, Ca. 92227

14 (760) 351-3333

15

16 Dr. Reese

17

18 STATEMENTS

19

20 **Party #1 (Przysiecki)** was unable to relate anything, due to his fatal injuries.

21

22 **Witness #1 (Hove)** was contacted at scene and related the following: He was riding with
 23 P-1 and was staggered to the right of P-1, approximately 50 feet behind P-1. They had just
 24 left P-1's father's campsite located near Gecko Rd. and SR-78 and were traveling to P-1's
 25 stepfather's campsite located near Gecko Rd. and mile post marker 2.5. They were in
 26 fourth gear at approximately 45 mph traveling in a southeast direction. They were about to
 27 travel in between some shrubs when he noticed V-2 entering the area northbound in
 28 between shrubs. He stopped and noticed P-1 did not notice V-2 because of the shrubs

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DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
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and was going to collide into V-2. V-1 collided into the left front of V-2. After the collision P-1 was thrown off of V-1 and landed on the sand. He stated that he had been with P-1 the entire morning and P-1 does not drink alcohol nor does he use any drugs.

Party #2 (Eifert) was contacted at scene and related the following: He was traveling in a northeast direction leaving his campsite and traveling with a group of other vehicles towards SR-78. He was in second gear and estimated his speed to be 40 mph. He was traveling down a hill and entering a flat part of the sand and did not notice any vehicles or see any whips traveling in the area. He began entering an area that contained shrubs when he noticed something coming from the left side. He swerved V-2 to the right. He was unable to avoid V-1 and was struck along the left front by V-1. After the collision V-2 rolled over onto its left side. P-2 has been driving off road for approximately ten years and been to Glamis a total of three times. P-2 had V-2 for approximately three months. P-2 never noticed V-1 as he was traveling down the hill. He noticed V-1 when he was approximately 50 feet from the collision scene.

STATEMENTS CONTINUED

Passenger #1 (T. Eifert) was contacted at scene and related the following: She was sitting in the right front of V-2 and P-2 was driving. They were traveling in a northerly direction at 40 mph. She just remembers entering an area with shrubs and never saw V-1 until after the collision. After the collision V-2 rolled over onto its left side.

Witness #2 (Rieck) was contacted at scene and related the following: He was traveling approximately 150 feet behind V-2 and they had just left the campsite. He was at the top of a hill and V-2 was at the bottom. He estimated V-2 was traveling between 45-50 mph. He noticed V-2 was entering an area with shrubs and he observed V-1 was traveling straight towards V-2. He believed V-1 was opened up all the way, but couldn't estimate a speed. P-2 swerved V-2 to the

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1 right to avoid a collision, but it was too late and V-1 collided into V-2. He stated that there was no
 2 way to avoid a collision and in that area it was hard to see because of the shrubs and everything
 3 is flat.

4
 5 **Witness #3 (Wolfe)** was contacted at scene and related the following: He was sitting in the
 6 right front seat and Witness #2 was driving. They were headed towards the SR-78 and were
 7 approximately 200 feet behind V-2. He stated that V-2 was traveling on a flat part of the sand and
 8 they were up on a hill. He estimated V-2's speed to be between 45-50 mph. He stated V-2 was
 9 entering an area with shrubs and from where they were stopped he could see V-1 was traveling
 10 straight towards V-2. He stated that P-2 attempted to avoid a collision by swerving V-2 to the
 11 right, but it was too late. V-1 collided into the front of V-2. P-1 was thrown off of V-1 and V-2
 12 rolled onto it left side. He stated that V-1 was traveling at a high rate of speed and appeared to
 13 be opened up all the way. He stated that there was no way to avoid a traffic collision due to the
 14 shrubs obstructing the visibility of P-2 and P-1.

15
 16 **OPINIONS AND CONCLUSIONS**

17 **SUMMARY**

18
 19 Party #1 (Przysiecki) was traveling on Vehicle #1 (Honda) southeast in the open desert of
 20 the Imperial Sand Dunes Recreational Area (Glamis) in fourth gear, in excess of 45 mph.
 21 Party #2 (Eifert) was traveling in Vehicle #2 (Buckshot) northeast in the open desert of the
 22 Imperial Sand Dunes Recreational Area (Glamis) at 40 mph. Due to P-1's unsafe speed on an
 23 off-highway vehicle, he entered the area that was flat and had desert shrubs in front of V-2. P-2
 24 noticed something coming from the left side and attempted to take evasive action by swerving V-2
 25 to the right. V-2 was unable to avoid V-1 and V-1 collided into the left front of V-2. After the
 26 collision P-1 was thrown from V-1 and landed at his point of rest. V-2 rolled over onto its left side.
 27 Summary was based on the statements obtained, damage to the involved vehicle and physical
 28 evidence.

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1 AREA OF IMPACT (AOI)

2

3 AOI #1 (V-1 vs V-2) was located using a GPS coordinate of approximately N 32 degrees
4 56.974 and W 115 degrees 08.876.

5 AOI #2 (P-1 vs ground) was located using a GPS coordinate of approximately N 32
6 degrees 56.979 and W 115 degrees 08.877.

7 AOI was based on the statements obtained, damage to the involved vehicle and physical
8 evidence.

9

10 CAUSE

11

12 The cause of this traffic collision is Party #1 (Przysiecki) by driving Vehicle #1 (Honda)
13 in violation of 38305 VC- (No person shall drive an off-highway motor vehicle at a speed greater
14 than is reasonable or prudent and in no event at a speed which endangers the safety of other
15 persons or property). Cause was based on the statements obtained, damage to the involved
16 vehicle and physical evidence.

17

18 RECOMMENDATIONS

19

20 None.

21

22

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
J.D. Cheak	16842	12/26/2005		



Imperial County Coroner's Office

328 Applesfill Rd. El Centro, CA 92243

Phone: (760) 339-6328 Fax: (760) 339-6330



COPY

Kyle Robert Przysiecki

Coroner Case Number: 05-238

CLASSIFICATION	Manner of Death Accident (Vehicle)		Sub Manner of Death			Deputy Coroner Charles R. Lucas		
	Type of Medical Examination Autopsy		Time Departed 1419	Time Arrival 1454	Date of Death 12/25/2005	Time of Death 1408		
DECEDENT PERSONAL DATA	Name-First Kyle		Middle Robert		Last Przysiecki		Marital Status Never Married	
	Age 15	Date of Birth 04/08/1990	Place of Birth CA		Height 6' 02"	Weight 205	Hair Brown	Eyes Blue
	Sex M	Teeth	Race White					SSN 623-42-8473
	Scars, Marks, Tattoos							
RESIDENCE	Address 1723 W. Beverley Dr.					City Orange	State Californ	Zip 92868
PLACE OF DEATH	Place Open Desert							County Imperial
	Address Geck Road, Glamis N32.94968 W 115.14801					City Glamis	State CA	
REPORTING INFORMATION	Death Reported By		Agency CHP El Centro		Date 12/25/2005	Time 1412	Removed From Scene To	
	Address 2331 Hwy. 86				City El Centro	State CA	Zip 92243	
CAUSE OF DEATH	Immediate Cause: Due to:		Chest and Abdominal Injuries Blunt Force Trauma		CONFIDENTIAL DO NOT REPRODUCE OR RELEASE TO ANYONE OUTSIDE THE CRIMINAL JUSTICE SYSTEM			
Due to:								
Due to:								
OTHER SIGNIFICANT CONDITIONS	None							
INJURY INFORMATION	Place of Injury Open Desert			Injury at Work? No	Date of Injury 12/25/2005	Time Unknown	Estimated	
	Address of Injury GPS: N 32.94968 W 115.14801			City Glamis	County Imperial	State CA		
	Injury Description The decedent was driving a motorcycle involved in an accident							
IDENTIFICATION	Identification Method Visually			Identified By Father				
NOTIFIED	Name Michael Ted Przysiecki		Relationship Father		Mailing Address 1723 W. Beverley Dr. Orange, CA 92868			
	Notified By Charles R. Lucas			How Notified In Person		Date 12/25/2005	Time 1454	
ADDITIONAL INFORMATION	Physician		Other Investigation CHP El Centro		Funeral Home Frye Chapel & Mortuary			

The Foregoing Instrument Is A Correct
Copy Of The Original On File In This Office.

Harold D. Carter, Sheriff-Coroner

Attest: 6-6-06

Sheriff-Coroner

Charles R. Lucas Supervising Deputy Coroner

Charles R. Lucas Supervising Deputy Coroner

C-05-238

Kyle Przysiecki

2

COPY

1 DEPUTY CORONER:

2 I, Charles R. Lucas, Supervising Deputy Coroner, conducted this
3 investigation for the Imperial County Coroner's Office.

4 RECEIPT OF CALL:

5 On Sunday, December 25, 2005, at approximately 1412 hours, I received
6 a telephone call at my residence from the Imperial County Sheriff's Office
7 Communication Center, advising me of a coroner case involving a deceased
8 person located at Glamis. I immediately responded to that location.

9 ARRIVAL AT SCENE:

10 On December 25, 2005, at approximately 1454 hours, I arrived at the
11 scene and met with the Sheriff's Deputy's on scene, who directed me to the
12 decedent's location.

13 DESCRIPTION OF SCENE / GPS:

14 The scene is that of open desert approximately 200 yards east of Gecko
15 Road in the Imperial Sand Dunes Recreation Area otherwise known as Glamis.

16 The GPS for this location is N 32.94968 and W 115.14801.

17 VIEWING OF DECEDENT:

18 Upon my arrival I observed the decedent was lying on the east side of a
19 small dune covered by a yellow emergency blanket. Upon removal of the blanket
20 I saw that the decedent was lying supine and had medical intervention devices in
21 place that are described as follows: 3 electrocardiogram patches, 1 to the upper
22 right chest, 1 to the upper left chest, and 1 to the left side; an endotracheal tube;
23 and 1 intravenous line in the right inner arm.

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Kyle Przysiecki

COPY 3

1 The decedent did not show signs of rigor or cyanosis, but lividity was
2 present on the back area of the decedent. I did not observe any signs of foul play
3 type trauma to the decedent's person.

4 The decedent is a White male adult, 15 years of age, 6'2" tall, weighing
5 approximately 205 lbs, with brown hair and blue eyes. I further noted the
6 decedent was wearing grey and black motorcycle pants, grey and black
7 motorcycle boots, and a grey and black motorcycle shirt.

8 **PROPERTY:**

9 While at the scene I initiated an Imperial County Coroner's Office property
10 receipt number 1116, to reflect that no property was retained by the Imperial
11 County Coroner's Office.

12 **REMOVAL / TRANSPORTATION:**

13 Prior to removal the decedent was placed in a removal pouch and then
14 transported to the Imperial County Coroner's Facility, located at 799 Highway 86,
15 Brawley, CA.

16 **IDENTIFICATION:**

17 The decedent's father, Michael Przysiecki, identified him as Kyle
18 Przysiecki, with a date of birth of April 8, 1990.

19 **NOTIFICATION:**

20 Paramedics made notification to the decedent's father, Michael Przysiecki,
21 on December 25, 2005, prior to my arrival

22 **X-RAYS:**

23 No x rays were taken of the decedent.

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Kyle Przysiecki

COPY 4

1 **POST MORTEM EXAMINATION:**

2 On December 30, 2005, at approximately 0835 hours, a post mortem
3 examination was conducted under the direction of Darryl J. Garber, M.D.,
4 Forensic Pathologist. Present at the post mortem examination was Autopsy
5 Assistant Miguel Del Valle and I.

6 At the conclusion of the post mortem examination at approximately 0935
7 hours, Dr. Garber listed the cause of death as; (A) **Chest and Abdominal**
8 **Injuries**, (B) **Blunt Force Trauma**, other conditions; **none**.

9 **FINGERPRINTS / PHOTOGRAPHS:**

10 Deputy Coroner Mike Mistriel took fingerprints of the decedent at the post
11 mortem examination.

12 I took photographs of the scene and Deputy Coroner Mike Mistriel to
13 photographs at the post mortem examination.

14 **INVESTIGATION:**

15 Subsequent investigation revealed that on December 25, 2005, at
16 approximately 1320 hours the decedent, Kyle Przysiecki, was riding a motorcycle
17 in generally a southeasterly direction when a dune buggy traveling in generally a
18 northeast direction collided with the decedent. The collision caused the decedent
19 to be ejected from the motorcycle and the dune buggy to roll over on the driver's
20 side.

21 Emergency medical assistance was summoned and paramedics arrived in
22 an ambulance. The paramedics evaluated the decedent and started emergency
23 care. The information from their evaluation was relayed to the base hospital

C-05-238

Kyle Przysiecki

COPY 5

1 where after careful consideration Doctor Rees pronounced the decedent dead at
2 1408 hours.

3 Based upon all of the evidence, toxicology and autopsy information, this
4 case has been classified as an **accidental** death by, the Imperial County
5 Coroner's Office and me.

6 **TOXICOLOGY TESTS:**

7 On December 30, 2005, during the post mortem examination, a sample of
8 the decedent's central blood, urine, and bile was retained for toxicology testing.

9 On January 6, 2005, the Imperial County Coroner's Office received the
10 toxicology test results, which indicates that the decedent ingested no detectible
11 substances prior to his death. For further information refer to Toxicology Report
12 in the file.

13 **WITNESSES:**

- 14 1. Darryl J. Garber, M.D., Forensic Pathologist, Rancho Mirage, CA
- 15 2. Miguel Del Valle, Autopsy Assistant, Imperial County Coroner's Facility,
16 Brawley, CA
- 17 3. Charles R. Lucas, Supervising Deputy Coroner, Coroner's Office, Imperial
18 County Sheriff's Department, El Centro, CA
- 19 4. Doctor Rees, El Centro Regional Medical Center, El Centro, CA
- 20 5. J.D. Cheak, Officer, California Highway Patrol, El Centro, CA

21 **REFERENCE NOTES:**

- 22 1. Death certificate as filed with the Imperial County Health Department in file
- 23 2. Autopsy protocol as per Dr. Garber in file

C-05-238

Kyle Przysiecki

COPY 6

- 1 3. Imperial County Coroner's property receipt numbered 1116 in file
- 2 4. Toxicology test results in file
- 3 5. Photographs in file on compact disk
- 4 6. Fingerprints in file
- 5 7. California Highway Patrol Report number 05-12-53, as completed by
- 6 Officer Cheak in file

7

8

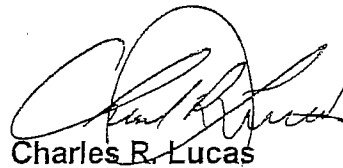
9 **Harold D. Carter**10 **Sheriff-Coroner**11 **Imperial County, CA**

12

13

14

BY:



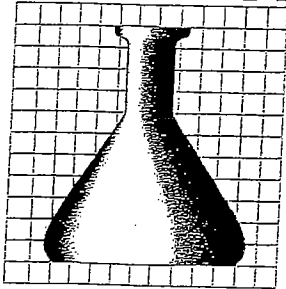
Charles R. Lucas

15

Supervising Deputy Coroner

16

17 **HDC/CRL**

BIO-TOX**BIO-TOX LABORATORIES**Director
Romulo Tabo, M.D.Chief Toxicologist
Dale R. Somers, C.L.S.Toxicologist
Maureen Black, C.T.S.**COPY**IMPERIAL COUNTY SHERIFF-CORONER
328 APPLESTILL RD.
EL CENTRO, CA 9224305-238
PRZYSIECKI, KYLE R.

PATIENT NAME		SEX	DATE OF DEATH
PRZYSIECKI, KYLE R.		M	12/25/05

BTL NUMBER	REQUESTING AGENCY	REQUESTED BY	AGENCY NUMBER
6-60349-9	2438	LUCAS	05-238

SPECIMEN	DATE COLLECTED	TIME TAKEN	DATE RECEIVED	DATE REPORTED
BLOOD	12/30/05	09:03	01/04/06	01/06/06

EXPANDED IMMUNOASSAY DRUG SCREEN

SAMPLE SCREENED FOR:
 AMPHETAMINES (AMPHETAMINE, METHAMPHETAMINE), BENZODIAZEPINES, CANNABINOIDS,
 COCAINE AND/OR METABOLITE, OPIATES (MORPHINE, CODEINE) PHENCYCLIDINE (PCP),
 BARBITURATES AND ALCOHOL.

TEST

RESULTS

ALCOHOL, ETHYL BLOOD

0.00% (W/V)

TRAFFIC PANEL BLOOD

NONE DETECTED

CONFIDENTIAL
 DO NOT REPRODUCE OR RELEASE TO ANYONE
 OUTSIDE THE CRIMINAL JUSTICE SYSTEM

The Foregoing Instrument Is A Correct
 Copy Of The Original On File In This Office.

Attest: 6606
 Sheriff-Coroner

County Of Imperial, State of California

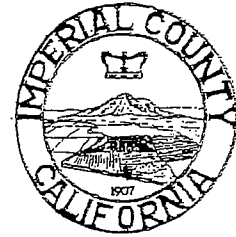
By Vernon Royce Deputy



HAROLD D. CARTER
Sheriff-Coroner-Marshal

CORONER'S OFFICE COUNTY OF IMPERIAL

COPY



DARRYL J. GARBER, M.D.
Forensic pathologist

AUTOPSY PROTOCOL

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #05-238

ANATOMIC SUMMARY:

- I. Blunt force trauma
 - A. Chest and abdominal injuries
 - 1. Transected thoracic aorta
 - a. Bilateral hemothoraces (1,190 left, 260 cc right)
 - b. Bilateral pulmonary atelectasis
 - 2. Multiple rupture/lacerations, liver and right adrenal gland
 - 3. Multiple fractures, right ribs 3 through 7, left ribs 3 through 10, pelvis and right femur
 - B. Multiple abrasions, contusions and lacerations, face, torso, bilateral upper and bilateral lower extremities
- II. Toxicology (see separate report)

CONCLUSION: (Cause of Death)

- A) Chest and abdominal injuries
- B) Blunt force trauma

OTHER CONDITIONS: None

DATE AND TIME OF AUTOPSY: December 30, 2005 @ 8:35 a.m. to 9:35 a.m.

The Foregoing Instrument Is A Correct
Copy Of The Original On File In This Office.
Attest: 6-6-06

Sheriff-Coroner
County Of Imperial, State of California

By Norma Royce Deputy

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COPY

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #05-238
PAGE TWO

EXTERNAL EXAMINATION: The body is that of a well-developed and well-nourished white teenage male which appears to be about the stated age of 15 years old, weighing approximately 205 pounds and measuring approximately 74" in height. The body is in rigor mortis. There are no significant scars over the body. An intravenous line is present in the right antecubital fossa. A thoracostomy tube is present in the right anterior superior chest. There are multiple abrasions, contusions and lacerations over the body which will be separately described. The hair is brown. The head is not remarkable except for some injuries to be described. The eyes are blue. The eyes and ears show no abnormality. The nose and mouth are normal and the mouth contains an endotracheal tube. The chest and abdomen are normal except for some injuries to be described. Genitalia are those of a normal teenage male. The extremities show multiple injuries to be described.

DESCRIPTION OF EXTERNAL INJURIES: There are multiple 1 to 3 cm red-brown abrasions over the bilateral chin and left cheek. There is a 6 x 13 cm red-brown abrasion over the right lower quadrant of the abdomen. There is a 2 cm red abrasion over the suprapubic region of the lower abdomen. There are multiple 0.5 to 3.4 x 7 cm pink and red-brown abrasions and contusions over the bilateral anterior thighs, right anterior knee, bilateral anterior lower legs, right dorsal foot and right posterior thigh. There is a 5 cm irregular open laceration over the left anterior lateral thigh. There is a 1 x 3.5 cm red-brown abrasion over the right posterior flank. There is a 0.7 x 4 cm red-brown abrasion over the right lower back. There are multiple 0.5 to 2 cm red-brown and purple abrasions and contusions over the bilateral dorsal hands.

DESCRIPTION OF INTERNAL INJURIES: Examination of the chest reveals multiple fractures of the right ribs 3 through 7 and left ribs 3 through 10 anteriorly and laterally. The aorta is completely transected at the descending thoracic aorta 2 cm distal to the aortic arch. There are 1,190 cc of liquid and clotted blood in the left pleural cavity, 260 cc of liquid and clotted blood in the right pleural cavity. The lungs show bilateral atelectasis. Examination of the abdomen reveals comminuted fractures of the pelvis. Examination of the liver reveals multiple rupture/lacerations of the left lobe measuring 3.7 to 11.3 cm with extensive fragmentation of the right lobe of the liver. The right adrenal gland is extensively fragmented and hemorrhagic.

Examination of the right femur reveals a mid shaft fracture dislocation.

OPINION: These are fatal chest and abdominal injuries due to blunt force trauma leading to the demise of this 15-year-old white male.

INTERNAL EXAMINATION: The body is opened with the usual Y-shaped incision. The organs of the thorax and abdomen are in their normal positions. The pleural, pericardial and peritoneal surfaces are smooth and glistening. There are extensive bilateral hemothoraces as previously described with a midline shift of the mediastinum to the right. The liver is at the right costal margin. The mediastinum is in the midline. The liver is at the right costal margin.

COPY

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #06-238
PAGE THREE

CARDIOVASCULAR SYSTEM: The heart weighs 320 gm. The epicardium is smooth and glistening. The myocardium is firm and red-brown. The endocardium and valves are thin and glistening. The coronary arteries are normally developed. The aorta is normal in caliber and there is complete transection of the descending thoracic aorta 2 cm distal to the aortic arch. The great vessels of the neck and visceral arteries are normal in size. The great veins are collapsed and empty.

RESPIRATORY SYSTEM: The right lung weighs 410 gm, the left 310 gm. The visceral pleurae are smooth and glistening. The cut surfaces are contused and congested. The larynx, trachea and major bronchi are lined by smooth glistening mucosa.

GASTROINTESTINAL SYSTEM: The esophagus is normal. The stomach is empty. The small bowel contains red-brown chyme. The large bowel contains green-brown soft stool.

HEPATOBIILIARY SYSTEM: The liver weighs 1,360 gm. The surface shows multiple rupture/lacerations with extensive fragmentation of the right lobe. The parenchyma is soft and hemorrhagic. The gallbladder is intact and contains 7 cc of bile. The bile ducts are normally developed. The pancreas is firm and pale.

HEMATOPOIETIC SYSTEM: The spleen weighs 230 gm. The surface is smooth. The parenchyma is soft and congested. The bone marrow is firm and red-brown.

UROGENITAL SYSTEM: The right kidney weighs 120 gm, the left 130 gm. The surfaces are smooth. The cortices are well demarcated from the medulla. The renal pelves, ureters and urinary bladder are normally developed. The bladder contains 60 cc of urine. The prostate is normal in size. The testicles are normally descended and within the scrotum.

ENDOCRINE SYSTEM: The pituitary, thyroid and adrenal glands are normal in size and configuration and there is fragmentation of the right adrenal gland.

MUSCULOSKELETAL SYSTEM: The axial and appendicular skeleton is normally developed and shows the previously described injuries.

CENTRAL NERVOUS SYSTEM: The brain weighs 1,430 gm. The cerebral hemispheres are symmetrical with normal convolutions. The leptomeninges are clear and glistening. The cortex is well demarcated from the white matter. The ventricles are normal in size and lined by smooth glistening ependyma. The cerebrospinal fluid is clear. The basal ganglia are well delineated. The cerebellum, brain stem and Circle of Willis are normally developed.

FORENSIC PHOTOGRAPHY: Photographs are taken prior to beginning and during the autopsy.

COPY

NAME OF DECEDENT: PRZYSIECKI, KYLE CORONER'S CASE: #06-238
PAGE FOUR

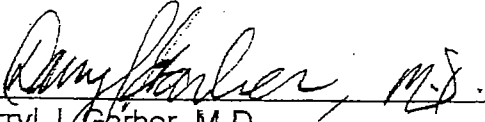
FORENSIC RADIOLOGY: No x-rays of the body are taken.

TOXICOLOGY: Blood from the left chest, bile and urine are submitted for routine toxicology.

HISTOLOGY: Tissue is retained in the hold jar.

WITNESS: Coroner's Deputy, Mike Mistriel, from the Imperial County Sheriff's Office, witnessed the autopsy.

OPINION: On the basis of the autopsy findings, it is evident that this 15-year-old white male suffered from chest and abdominal injuries due to blunt force trauma which resulted in his rapid demise. The decedent was reportedly driving his motorcycle through the open desert when he was struck by a dune buggy traveling across his path. He was pronounced dead at the scene of the accident in the open desert.



Darryl J. Garber, M.D.
Forensic Pathologist

3/23/06
Date

Date/Time: _____

No

Ex R Jones

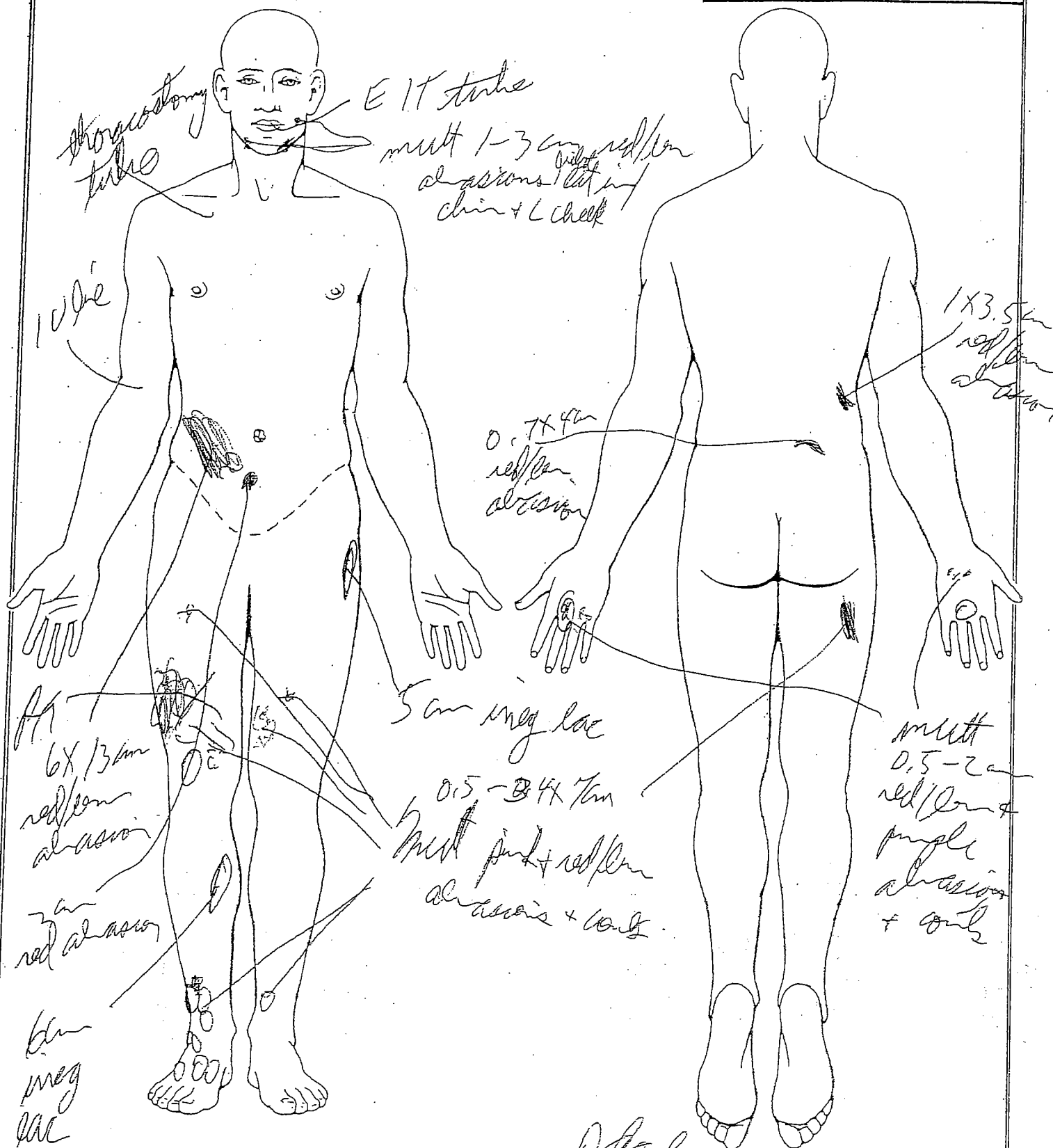
for police
for B. 3-7 (Ant/Out)

20

COPY

05-238

Przybycki, Kyle



[Signature]

M.D.

Deputy Medical Examiner



Imperial County Coroner's Office

328 Applestill Rd. El Centro, CA 92243

Phone: (760) 339-6328 Fax: (760) 339-6330



AUTOPSY MEMO

COPY

NAME	Kyle Robert Przysiecki	SEX	M	HEIGHT	6'02"
Death DATE	12/25/2005	AGE	15	WEIGHT	205
TIME	1408	RACE	White	HAIR	Brown
PLACE	Open Desert	COMPLX	Med	EYES	Blue

Place of Autopsy

Imperial County Coroner's Facility, 799 Highway 86, Brawley, California, 92227

Attending Physician (if any)

SUMMARY OF CASE:

The decedent was driving his motorcycle through the open desert when a dune buggy traveling across his path collided with him, ejecting him off the motorcycle.

LAB TESTS: ☒ Traffic ☐ Coroner ☐ Comprehensive ☐ Other

AUTOPSY REPORT

DATE 12/30/2005 TIME _____ ☐ NATURAL ☒ ACCIDENT ☐ HOMICIDE

PATHOLOGIST Darryl J. Garber ☐ SUICIDE ☐ PENDING ☐ UNDETERMINED

TECHNICIAN _____ SPECIMENS RETAINED: ☒ BLOOD ☒ BILE ☒ URINE ☐ TISSUE

☐ X-RAYS TAKEN # _____ ☐ JAWS TAKEN ☐ LIVER ☐ VIT. ☐ CSF

CAUSE OF DEATH: (A) Chest and abdominal injuries - secs

(B) Blunt force trauma - secs

(C) _____

(D) _____

OTHER CONDITIONS: None

Decedent: Kyle Robert Przysiecki
Case Number: 05-238

Deputy Coroner: Charles R. Lucas, Supervising Deputy Coroner
Date: 12/30/2005



Imperial County Coroner's Office

328 Applestill Rd. El Centro, CA 92243

Phone: (760) 339-6328 Fax: (760) 339-6330



COPY

AUTOPSY INFORMATION SHEET

 Autopsy Date: 12/30/2005 Time Start: 0835 Time End: 0935 Seal Cut: _____

Coroner at Post:

Charles R. Lucas, Supervising Deputy Coroner

Michael Mistriel, Deputy Coroner

☐☒☐

Pathologist:

Darryl J. Garber

☒☐☐

Autopsy Assistant:

Miguel Del Valle

☒☐☐

I.D. Division

☐☐☐☐

Witnesses:

Name

Agency

NOTES:

Central Blood (time):	<u>0903</u>	By:	<u>Dr. G</u>	Chest Blood (time):		By:	
Peripheral Blood (time):		By:		Vitreous Humor:		By:	
Urine Taken:	<u>0910</u>	By:	<u>Dr. G</u>	Liver for Tox:		By:	
				Bile:	<u>0908</u>	By:	<u>Dr. G</u>

Body Organ Weights (Grams):

Right Kidney:	<u>120</u>	Right Lung:	<u>410</u>	Brain:	<u>1430</u>
Left kidney:	<u>130</u>	Left Lung:	<u>310</u>	Stomach:	
Liver:	<u>1360</u>	Heart:	<u>320</u>	Uterus:	
Spleen:	<u>230</u>	Pancreas:		Other:	

A PREVIOUS LOCATED

FRACTURED PELVIS

1. RT RIBS 3-7 ANTERIOR

2. LT RIBS 3-10 "

 Decedent: Kyle Robert Przysiecki
 Case Number: 05-238

 Deputy Coroner: Charles R. Lucas, Supervising Deputy Coroner
 Date: 12/30/2005

DEPARTMENT OF PUBLIC HEALTH
COUNTY OF IMPERIAL
 EL CENTRO, CALIFORNIA

CERTIFICATE OF DEATH

3 2005 13 000823

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT — FIRST (Given)		3. LAST (Family)	
KYLE		PRZYSIECKI	
2. MIDDLE		4. DATE OF BIRTH mm/dd/yyyy	
ROBERT		04/08/1990	
5. AGE Yrs		6. SEX	
15		M	
9. BIRTH STATE/FOREIGN COUNTRY		10. SOCIAL SECURITY NUMBER	
CA		623-42-8473	
11. EVER IN U.S. ARMED FORCES?		12. MARITAL STATUS (at Time of Death)	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		Nev. Mar.	
13. EDUCATION — Highest Level (see worksheet on back)		14. WAS DECEDENT SPANISH/HISPANIC/LATINO? (If yes, see worksheet on back)	
10		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
15. DECEDENT'S RACE — Up to 3 races may be listed (see worksheet on back)		16. DECEDENT'S RACE — Up to 3 races may be listed (see worksheet on back)	
White		White	
17. USUAL OCCUPATION — Type of work for most of life. DO NOT USE RETIRED		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)	
Student		Public Education	
19. YEARS IN OCCUPATION		20. DECEDENT'S RESIDENCE (Street and number or location)	
10		1723 W. Beverly Dr.	
21. CITY		22. COUNTY/PROVINCE	
Orange		Orange	
23. ZIP CODE		24. YEARS IN COUNTY	
92868		15	
25. STATE/FOREIGN COUNTRY		26. INFORMANT'S NAME, RELATIONSHIP	
California		Angel Hisaw-Przysiecki - Mother	
27. INFORMANT'S MAILING ADDRESS (Street and number or rural route number, city or town, state, ZIP)		28. NAME OF SURVIVING SPOUSE — FIRST	
201 So. Magnolia #43 - Anaheim, CA 92804		-	
29. MIDDLE		30. LAST (Maiden Name)	
-		-	
31. NAME OF FATHER — FIRST		32. MIDDLE	
Michael		Ted	
33. LAST		34. BIRTH STATE	
Przysiecki		CA	
35. NAME OF MOTHER — FIRST		36. MIDDLE	
Angel		Venus	
37. LAST (Maiden)		38. BIRTH STATE	
Hisaw		CA	
39. DISPOSITION DATE mm/dd/yyyy		40. PLACE OF FINAL DISPOSITION	
12/30/2005		RES: Michael Przysiecki 1723 W. Beverly Dr. - Orange, CA 92868	
41. TYPE OF DISPOSITION(S)		42. SIGNATURE OF EMBALMER	
CR/RES		Not Embalmed	
43. LICENSE NUMBER		44. NAME OF FUNERAL ESTABLISHMENT	
-		Frye Chapel & Mortuary	
45. LICENSE NUMBER		46. SIGNATURE OF LOCAL REGISTRAR	
FD 512		[Signature]	
47. DATE mm/dd/yyyy		48. SIGNATURE OF LOCAL REGISTRAR	
12/30/2005		[Signature]	
101. PLACE OF DEATH		102. IF HOSPITAL, SPECIFY ONE	
Open Desert		<input type="checkbox"/> IP <input type="checkbox"/> ERVOP <input type="checkbox"/> DOA	
103. IF OTHER THAN HOSPITAL, SPECIFY ONE		104. COUNTY	
<input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home, LTC <input type="checkbox"/> Decedent's Home <input checked="" type="checkbox"/> Other		Imperial	
105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)		106. CITY	
Gecko Rd., GPS: N32.94968 W115.14801		Glamis	
107. CAUSE OF DEATH		108. DEATH REPORTED TO CORONER?	
Enter the chain of events — diseases, injuries, or complications — that directly caused death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE.		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
(A) Immediate cause (Final disease or condition resulting in death)		Time Interval Between Onset and Death	
Chest and Abdominal Injuries		Secs. C-05-238	
(B) Sequentially, list conditions, if any, leading to cause on Line A. Enter UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST		109. BIOPSY PERFORMED?	
Blunt force trauma		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
(C) 110. AUTOPSY PERFORMED?		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
(D) 111. USED IN DETERMINING CAUSE?		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
112. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107		113. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date.)	
None		No	
114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.		115. SIGNATURE AND TITLE OF CERTIFIER	
Decedent Attended Since Decedent Last Seen Alive		116. LICENSE NUMBER	
(A) mm/dd/yyyy (B) mm/dd/yyyy		117. DATE mm/dd/yyyy	
118. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE		119. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.	
120. INJURED AT WORK?		121. INJURY DATE mm/dd/yyyy	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		122. HOUR (24 Hours)	
123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)		124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)	
Open Desert		The decedent was driving a motorcycle that was involved in an accident.	
125. LOCATION OF INJURY (Street and number, or location, and city, and ZIP)		126. SIGNATURE OF CORONER / DEPUTY CORONER	
Glamis Dunes, GPS: N32.94968 W115.14801 - Glamis, CA 92248		127. DATE mm/dd/yyyy	
128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		129. FAX AUTH. #	
Michael Mistriel, Deputy Coroner		130. CENSUS TRACT	
131. STATE REGISTRAR		132. CENSUS TRACT	
A B C D E		133. CENSUS TRACT	

CERTIFIED COPY OF VITAL RECORDS
 STATE OF CALIFORNIA, COUNTY OF IMPERIAL

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
 COPY OF THE ORIGINAL RECORD AS FILED IN THIS OFFICE.

DATE ISSUED

DEC 30 2005

STEPHEN W. MUNDAY, M.D., M.P.H., M.S.
 LOCAL REGISTRAR
 IMPERIAL COUNTY, CALIFORNIA

This copy is not valid unless prepared on engraved border, displaying the date and signature of the Local Registrar.

EXHIBIT

“2”



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY
REFER TO:

FEB 2 2007

Certified Mail - Return Receipt Requested

Venus Angelique Hisaw
16302 Rhone Lane
Huntington Beach, CA 92647

Dear Ms. Hisaw:

You have filed a wrongful death claim on behalf of your son, Kyle Przysiecki (Estate), in the amount of \$25,000,000.00 pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, which provides for settlement of claims for damages caused by the negligent act or omission of a government employee while acting within the scope of his/her employment under certain specified circumstances. The Bureau of Land Management has referred this claim to this office for administrative determination.

The administrative record fails to disclose any factual or legal basis to support a finding that the United States is responsible for the death of Kyle Przysiecki while riding his motorcycle at the Imperial Sand Dunes Recreational Area, San Bernardino County. Therefore, this claim must be and is hereby denied.

If you are dissatisfied with this finding, you may resubmit this claim, together with your reasons for reconsideration, to the Regional Solicitor, Pacific Southwest Region, Attn: Donna L. Reynolds, 2800 Cottage Way, Room E-1712, Sacramento, California 95825, within six months from the date of the mailing of this decision, or you may file an action in the United States District Court within that same six months.

Sincerely,

Clementine Berger
Deputy Regional Solicitor

CC:

Safety Officer, California State Office

7006 0100 0002 9211 7297

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Total Postage & Fees	\$	

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 Street, Apt. No.,
 or PO Box No. _____
 City, State, ZIP+4 _____

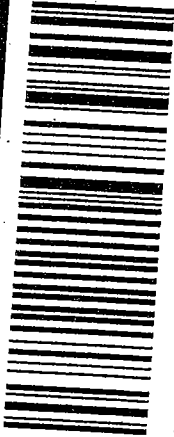
PS Form 3800, June 2002 See Reverse for Instructions

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR
PACIFIC SOUTHWEST REGION
2800 COTTAGE WAY, RM E-1712
SACRAMENTO, CA 95825-1890

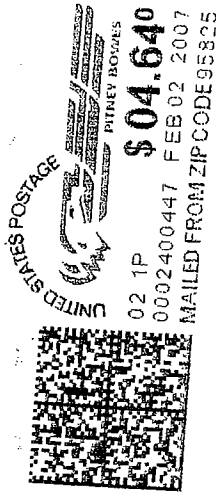
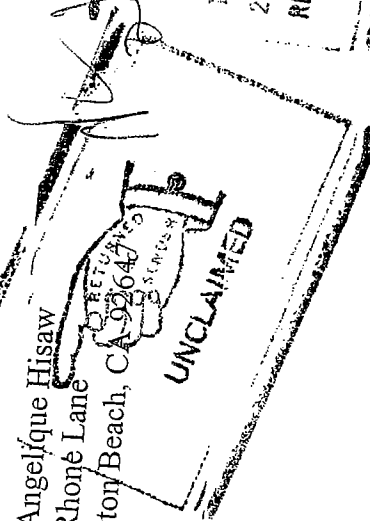
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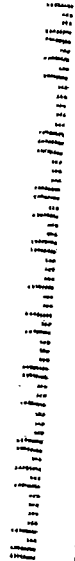
7006 0100 8002 9211 7297

Venus Angeli que Hisaw
16302 Rhoné Lane
Huntington Beach, CA 92647



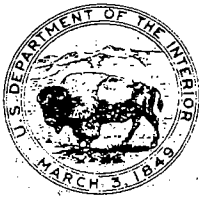
1st CLASS 2-5
2nd CLASS 2-15
RETURN 2-26

92647+4127



EXHIBIT

“3”



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY
REFER TO:

FEB 2 2007

Certified Mail - Return Receipt Requested

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16302 Rhone Lane
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If you are dissatisfied with this finding, you may resubmit this claim, together with your reasons for reconsideration, to the Regional Solicitor, Pacific Southwest Region, Attn: Donna L. Reynolds, 2800 Cottage Way, Room E-1712, Sacramento, California 95825, within six months from the date of the mailing of this decision, or you may file an action in the United States District Court within that same six months.

Sincerely,

Clementine Berger
Deputy Regional Solicitor

DLB

Resent to attorney:

Michael Avila

6080 Century Drive

LOS Angeles, CA 9004

cc:

Safety Officer, California State Office

3-2-07

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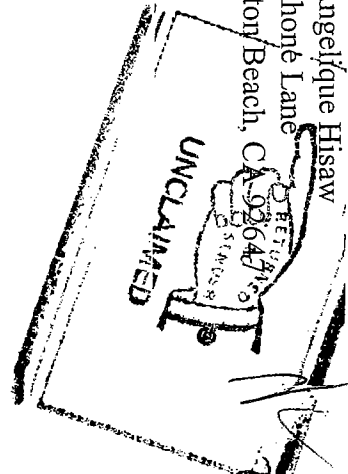
UNITED STATES
DEPARTMENT OF THE INTERIOROFFICE OF THE SOLICITOR
PACIFIC SOUTHWEST REGION
2800 COTTAGE WAY, RM E-1712
SACRAMENTO, CA 95825-1890

OFFICIAL BUSINESS

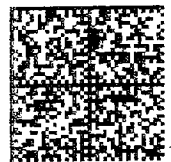
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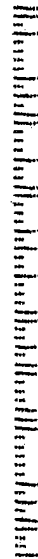
7006 0100 6002 9211 7297

Venus Angelique Hisaw
16302 Rhoné Lane
Huntington Beach, CA 92647-1630

1st CLASS	2-5
2nd CLASS	2-15
RETURN	2-26

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\$04.64⁰
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EXHIBIT

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AVILA & PEROS, LLP**ATTORNEYS AT LAW****LOS ANGELES**

2101 Rosecrans Avenue, Suite 5260

EL SEGUNDO, CALIFORNIA 90245

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Elaine Hsu
John T. Lupton

NEWPORT BEACH

4100 Newport Place, Suite 550
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (949) 838-0260
FACSIMILE: (949) 838-0261

RECEIVED
BUREAU OF LAND MANAGEMENT
2007 DEC 21 AM 9:15
EL CENTRO FIELD OFFICE
EL CENTRO, CA
Writer's e-mail address:
jpk@a-plaw.com

December 19, 2007

VIA U.S. MAIL

Vicki Wood
Field Manager
Bureau of Land Management
El Centro Field Office
1661 S. 4th Street
El Centro, CA 92243

Re: Przysiecki v. Eifert, et al.
Notice of Claim

Dear Ms. Wood:

Please find enclosed Venus Angelique Hisaw's Notices of Claims pursuant to the Federal Tort Claims Act against the Bureau of Land Management.

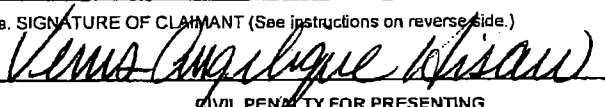
Should you have any questions or comments relative to the above, please do not hesitate to contact our office.

Very truly yours,

AVILA & PEROS, LLP

John P. Kristensen

JPK: nep
Enclosures: As stated

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: Attn: Vicki Wood, Field Manager Bureau of Land Management El Centro Field Office, 1661 S. 4th Street El Centro CA 92243			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Venus Angellque Hlsaw Michael F. Avila, Avila & Peros, LLP 2101 El Segundo, California 90245		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 12/20/1964	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 12/25/2005	7. TIME (A.M. OR P.M.) 1:00 P.M.	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) Please See Attachment "A"					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Please See Attachments "A" and "C"					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Please See Attachment "B"		Please See Attachment "B"			
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$5,000,000.00	12c. WRONGFUL DEATH \$20,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$25,000,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 		13b. Phone number of person signing form (310) 410-8001		14. DATE OF SIGNATURE 12/18/2007	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or Imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)			

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)
Not Applicable

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in Item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

A. **NAME AND ADDRESS OF THE CLAIMANTS:**

Venus Angelique Hisaw
C/O: Michael F. Avila, Esq.
AVILA & PEROS, LLP
2101 Rosecrans Avenue, Suite 5260
El Segundo, CA 90245
Telephone: (310) 410-8001
Facsimile: (310) 410-8004

B. **NAME AND ADDRESS OF PERSON TO WHOM CLAIMANT DESIRES NOTICES TO BE SENT:**

Michael F. Avila, Esq.
AVILA & PEROS, LLP
2101 Rosecrans Avenue, Suite 5260
El Segundo, CA 90245
Telephone: (310) 410-8001
Facsimile: (310) 410-8004

C. **DATE, PLACE AND OTHER CIRCUMSTANCES GIVING RISE TO THE CLAIM:**

Claimant is Venus Angelique Hisaw, the mother of **the deceased Kyle Przysiecki**

The following claims arise from the wrongful death of Kyle Przysiecki that occurred on or about Christmas Day December 25, 2005 in an unincorporated area of Imperial County, California 2005 in the Imperial Sand Dunes Recreation Area that is owned and operated by the United States Government's Bureau of Land Management, an agency within the Department of Interior.

Claimant is informed and believes, and thereon alleges that on or about December 25, 2005, the late Kyle Przysiecki was operating a 2003 Honda CRF 450 motorbike with California license number X07V40 (hereinafter "Motorbike") at approximately 1:00 p.m. when the motorbike was struck by a 2004 Buckshot X5 "Sand Rail", with vehicle identification number 122559315 and no state license plate (hereinafter "Sand Rail") that was driven by Shannon Duane Eifert of 17804 120th Avenue, Nunica, Michigan 49448. Kyle Przysiecki was operating the Motorbike on a sand highway when the Sand Rail entered at an excessive speed. Mr. Eifert was unreasonably and unjustifiably operating the Sand Rail at an excessive speed which was a substantial factor causing Kyle Przysiecki to suffer fatal injuries upon the Motorbike being struck by the Sand Rail.

Claimant is informed and believes, and thereon alleges, that the County of Imperial, State of California, State of California Department of Parks and Recreation and California Highway Patrol assumed responsibilities from the United States Bureau of

EXHIBIT

A

Land Management's in the operations and management of the Imperial Sand Dunes Recreation Area. Claimants are informed and believe, and thereon allege, that the County of Imperial, State of California, State of California Department of Parks and Recreation, California Highway Patrol and the Bureau of Land Management conscious, malicious and willful disregard in their respective responsibilities were substantial factors contributing to the untimely death of Kyle Przysiecki along with other wrongful acts and omissions.

Claimant is informed and believes, and thereon alleges, that as a direct result of said unlawful conduct on the part of the County of Imperial, State of California, State of California Department of Parks and Recreation, the California Highway Patrol and the Bureau of Land Management Kyle Przysiecki was killed.

D. CLAIMS FOR DAMAGES/ AMOUNT OF CLAIM:

1. Causes of Action

- a. Violation of Civil Rights: 42 USC 1981, 1983, 1985, 1986, and 1988;
- b. Violation of California Civil Code Section 52.1(b);
- c. Violation of Rights of Equal Protection United States Constitution;
- d. Violation of Rights to Due Process under the United States Constitution;
- e. Violation of rights of liberty under the United States Constitution;
- f. Violation of Article I, §7 of California Constitution;
- g. Assault;
- h. Battery;
- i. Negligent and Intentional Infliction of Emotional Distress;
- j. Negligence;
- k. Negligent Hiring and Supervision of Unfit Public Employee;
- l. Negligent Hiring and Supervision of Employees;

2. Nature of damages:

EXHIBIT

A

a. economic losses including medical charges, fire department/ ambulance charges, funeral and burial expenses, loss of support/ earnings and property damage;

b. non-economic damages including pain and suffering, grief and sorrow, emotional distress, loss of moral support, loss of consortium, loss of love, loss of companionship;

c. punitive damages;

d. injunctive relief; and

e. attorneys' fees and costs.

3. Amount of Damages:

a. Claimant's damages are in excess of \$25,000,000.00. (Please See §12 of the accompanying Standard Form 95 Prescribed pursuant to 28 CFR 14.2 and 43 CFR 22.3).

EXHIBIT

A

**WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE
OF INJURY:**

At this time, claimant believes that the following persons, in addition to the unknown California Highway Patrol Officer(s), Imperial County Sheriff's Department Officer(s) and Employee(s), California Department of Parks and Recreation Officer(s) and Employee(s), United States Bureau of Land Management Officer(s) and Employee(s), would have knowledge regarding the events of this claim and/or participated in the acts and/or omissions which caused the injury(s) to claimants:

<u>WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE OF INJURY:</u>	
California Highway Patrol Officer J.D. Cheak Badge Number 16842 California Highway Patrol 2331 Highway 86 Imperial, California 92251	Imperial County Sheriff Harold D. Carter 328 Applestill Road El Centro, California 92243
California Highway Patrol Officer M. Davidson Badge Number 17011 California Highway Patrol 2331 Highway 86 Imperial, California 92251	Imperial County Sheriff's Sergeant Marin Badge Number 848 328 Applestill Road El Centro, California 92243
Imperial County Sheriff's Deputy Kelley Badge Number 588 328 Applestill Road El Centro, California 92243	Gold Cross Paramedic S. Holt 905 S. Imperial Avenue El Centro, California 92243
Unknown Police Officer(s) Brawley Police Department 351 Main Street Brawley, California 92227	Unknown Deputy(s) Imperial County Sheriff's Department 328 Applestill Road El Centro, California 92243
Person Most Knowledgeable California Highway Patrol 2331 Highway 86 Imperial, California 92251	Person Most Knowledgeable Imperial County County Administration Center 940 West Main Street, Suite 209 El Centro, California 92243
Gold Cross Paramedic J. Cerda 905 S. Imperial Avenue	Shannon Duane Eifert 17804 120t Avenue Nunica, Michigan 49448

EXHIBIT

B

WITNESSES/PUBLIC EMPLOYEE(S) CAUSING OR WITH KNOWLEDGE OF INJURY	
El Centro, California 92243	Telephone: (616) 837-7898
Trisha Eifert 17804 120t Avenue Nunica, Michigan 49448 Telephone: 616) 837-7898	Richard Otto Rieck 9360 Evergreen Drive Traverse City, Michigan 49684 Telephone: (231) 275-3430
David Wolfe 1302 Millbury Road Northwood, Ohio 43619 Telephone: (419) 846-7600	Matthew Todd Hove 2210 S. Lewis Street Anaheim, California 92805 Telephone: (714) 939-9878
Person Most Knowledgeable FOX11 KTTV 1999 South Bundy Drive Los Angeles, California 90025	Micheal Przysiecki C/O: Michael F. Avila, Esq. AVILA & PEROS, LLP 6080 Center Drive, Suite 725 Los Angeles, CA 90045 Telephone: (310) 410-8001 Facsimile: (310) 410-8004

EXHIBIT**B**

EXHIBIT
C

CERTIFICATE OF DEATH

DEPARTMENT OF PUBLIC HEALTH

COUNTY OF IMPERIAL

EL CENTRO, CALIFORNIA

CERTIFICATE OF DEATH

3 2005 13 000823

1. NAME OF DECEDENT - FIRST (Given)		2. MIDDLE		3. LAST (Family)	
KYLE		ROBERT		PRZYSECKI	
4. DATE OF BIRTH month/day					
04/08/1990					
5. AGE Yrs. Mths. Ds. Yrs. Mths. Ds.					
15					
6. SEX M F					
M					
7. DATE OF DEATH month/day		8. HOUR (24 Hour)		9. SEX	
12/25/2005		1408			
10. DECEASED'S RACE - Up to 3 races may be listed (see instructions on back)					
White					
11. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED					
Student					
12. INDUSTRY OF BUSINESS OR INDUSTRY (e.g., grocery store, mail carrier, hospital, etc.)					
Public Education					
13. YEARS IN U.S. OCCUPATION					
10					
14. DECEASED'S RESIDENCE (Street and number or location)					
1723 W. Beverly Dr.					
15. CITY		16. COUNTY/PROVINCE		17. ZIP CODE	
Orange		Orange		92868	
18. YEARS IN COUNTY					
15					
19. STATE/FOREIGN COUNTRY					
California					
20. DECEASED'S MARITAL STATUS (at Time of Death)					
Nev. Mar.					
21. DECEASED'S RELATIONSHIP TO DECEASED (e.g., Mother, Father, etc.)					
Mother					
22. DECEASED'S ADDRESS (Street and number or rural route, city or town, state, ZIP)					
201 So. Magnolia #43 - Anaheim, CA 92804					
23. NAME OF SURVIVOR - FIRST		24. MIDDLE		25. LAST (Last Name)	
Michael		Red		Przysecki	
26. NAME OF FATHER - FIRST		27. MIDDLE		28. LAST	
Michael		Red		Przysecki	
29. NAME OF MOTHER - FIRST		30. MIDDLE		31. LAST	
Angel		Venus		Bisaw	
32. DISPOSITION DATE month/day					
12/30/2005					
33. PLACE OF DISPOSITION					
RES: Michael Przysecki 1723 W. Beverly Dr. - Orange, CA 92868					
34. TYPE OF DISPOSITION					
CR/RES					
35. SIGNATURE OF QUALIFIER					
Not Embalmed					
36. NAME OF FUNERAL ESTABLISHMENT					
Frye Chapel & Mortuary					
37. LICENSE NUMBER					
FD 512					
38. DATE month/day					
12/30/2005					
39. PLACE OF DEATH					
Open Desert					
40. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)					
Imperial - Gecko Rd., GPS: N32.94968 W115.14801					
41. DATE OF DEATH					
12/25/2005					
42. IMMEDIATE CAUSE (Final Cause or condition resulting in death)					
Chest and Abdominal Injuries					
43. UNDERLYING CAUSE (Underlying Cause or injury that initiated the process resulting in death)					
Blunt force trauma					
44. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 42					
None					
45. WAS OPERATION PERFORMED FOR ANY CONDITION IN 44? (If yes, type of operation and date)					
No					
46. SIGNATURE AND TITLE OF CORNER					
11. LICENSE NUMBER					
12. DATE month/day					
12/30/2005					
13. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE					
14. HECTORY THAT IN MY OFFICIAL CAPACITY I HAVE BEEN ADVISED THAT THE DECEASED WAS NOT A VICTIM OF A CRIME					
15. DATE month/day					
12/25/2005					
16. PLACE OF INJURY (e.g., home, construction site, road, etc.)					
Open Desert					
17. DESCRIBE HOW INJURY OCCURRED (Explain what happened in injury)					
The decedent was driving a motorcycle that was involved in an accident.					
18. LOCATION OF INJURY (Street and number, or location, and city, and ZIP)					
Glamis Dunes, GPS: N32.94968 W115.14801 - Glamis, CA 92248					
19. SIGNATURE OF CORNER / DEPUTY CORNER					
20. DATE month/day					
12/30/2005					
21. TYPE NAME TITLE OF CORNER / DEPUTY CORNER					
Michael Mistriel, Deputy Coroner					
22. DATE month/day					
12/30/2005					
23. TYPE NAME TITLE OF CORNER / DEPUTY CORNER					
Michael Mistriel, Deputy Coroner					
24. DATE month/day					
12/30/2005					
25. TYPE NAME TITLE OF CORNER / DEPUTY CORNER					
Michael Mistriel, Deputy Coroner					
26. DATE month/day					
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Michael Mistriel, Deputy Coroner					
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Michael Mistriel, Deputy Coroner					
98. DATE month/day					
12/30/2005					
99. TYPE NAME TITLE OF CORNER / DEPUTY CORNER					
Michael Mistriel, Deputy Coroner					
100. DATE month/day					
12/30/2005					

CERTIFIED COPY OF VITAL RECORDS
STATE OF CALIFORNIA, COUNTY OF IMPERIAL

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
COPY OF THE ORIGINAL RECORD AS FILED IN THIS OFFICE

DEC 30 2005

DATE ISSUED

STEPHEN W. MUNDAY, M.D., M.P.H., M.S.
LOCAL REGISTRAR
IMPERIAL COUNTY, CALIFORNIA

1 KAREN P. HEWITT
United States Attorney
2 ERNEST CORDERO, JR.
Assistant U.S. Attorney
3 State of California Bar No. 131865
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 557-7473
Email: ernest.cordero@usdoj.gov

6 Attorneys for Defendant
7 United States of America

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 VENUS ANGELIQUE HISAW,

12 Plaintiff,

13 v.
14

15 UNITED STATES; and DOES 100, inclusive,

16 Defendants.
17

Case No. 08cv1214-WQH (RBB)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS COMPLAINT
OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT**

DATE: October 14, 2008
TIME: 11:00 a.m.
CTRM: 4

Hon. William Q. Hayes

18 I.

19 INTRODUCTION

20 A prerequisite to filing a lawsuit under the Federal Tort Claims Act ("FTCA") is the
21 presentation of an administrative claim to the federal agency involved in the tortious activity.
22 If a timely administrative claim is denied in writing, the claimant may file suit within six months
23 of the date the agency sends the claimant its denial letter via certified or registered mail. A suit
24 filed beyond the six-month period is jurisdictionally barred.

25 In this case, Plaintiff cannot maintain her FTCA claims because she failed to file suit
26 within six months of the date the Department of the Interior, Bureau of Land Management
27 ("BLM") denied her claim. As demonstrated by the record, Plaintiff presented an administrative
28 claim to the BLM on January 19, 2007. BLM sent via certified mail a written

1 denial of the claim to Plaintiff's address of record on February 2, 2007. Plaintiff did not
2 commence an FTCA action within the six-month limitations period following the denial.

3 On December 21, 2007, Plaintiff filed a second administrative claim with BLM based on
4 the same incident. This second filing was an apparent attempt to "restart the clock" on the six-
5 month limitations period. However, as discussed below, applicable law does not permit
6 Plaintiff to resurrect her claims by filing a second administrative claim. Because Plaintiff did
7 not file this suit within six months of the denial of her first administrative claim, the Court lacks
8 subject matter jurisdiction to hear Plaintiff's FTCA causes of action in this case.

9 Finally, Plaintiff also has alleged a claim under 42 U.S.C. § 1983. However, the United
10 States is not a proper party to a Section 1983 claim. Therefore, Plaintiff's Section 1983 claim
11 should be dismissed.

12 II.

13 PROCEDURAL HISTORY AND BACKGROUND FACTS

14 This case arises out of the death of Plaintiff's son, Kyle Przysiecki, in an off-road
15 accident which occurred while he was riding his motorbike at the Imperial Sand Dunes
16 Recreation Area ("ISDRA"). (Complaint, ¶ 9.) On January 19, 2007, Plaintiff filed an
17 administrative claim with BLM alleging negligence with respect to BLM's staffing, maintenance
18 and supervision of the ISDRA (hereinafter, "First Administrative Claim"). (Declaration of Donna
19 L. Reynolds ("Reynolds Decl."), ¶ 1; First Administrative Claim, Exhibit 1 to Reynolds Decl.)^{1/}
20 Plaintiff filed the claim in her own name. (*Id.*) Nowhere in the claim is there any reference to
21 an attorney representing Plaintiff. (*Id.*)^{2/}

22
23 ^{1/} The date of claim presentation is deemed to be the day the agency receives the
24 administrative claim. 28 C.F.R. § 14.2(a) (a formal claim is not filed for purposes of 28 U.S.C.
25 § 2401(b) until a federal agency receives written notification of an incident and a claim from
the claimant, an authorized agent or representative); see also *Bailey v. United States*, 642 F.2d
344, 346 (9th Cir. 1981); *Moya v. United States*, 35 F.3d 501, 504 (10th Cir. 1994).

26 ^{2/} Currently pending before the Court is a related case entitled *The Estate of Kyle*
27 *Przysiecki, et al. v. Shannon Duane Eifert, et al.*, Case No. 07cv0039-WQH (RBB). That case,
28 and this action, both involve claims arising out of the death of Plaintiff's son, Kyle Przysiecki.
In a Motion to Join as Intervenor filed by Plaintiff in the related case, she stated that a conflict
of interest prevented Avila & Peros, LLP from representing both her and Michael Przysiecki

(continued...)

1 In her First Administrative Claim, Plaintiff listed her address as 16302 Rhone Lane,
 2 Huntington Beach, CA 92647. (Reynolds Decl., ¶ 2; First Administrative Claim, Exhibit 1 to
 3 Reynolds Decl.) On February 2, 2007, BLM sent Plaintiff a letter denying the claim via certified
 4 mail. (Reynolds Decl., ¶ 2; February 2, 2007 Denial Letter (see envelope attached to the
 5 letter), Exhibit 2 to Reynolds Decl.) The letter was sent to the same address listed in Plaintiff's
 6 administrative claim. (Id.)

7 On or about February 26, 2007, the Postal Service returned the denial letter to BLM with
 8 an explanation that the letter had been unclaimed. (Reynolds Decl., ¶ 3; February 2, 2007
 9 Denial Letter (see notations from Postal Service on envelope attached to the letter), Exhibit 2
 10 to Reynolds Decl.) The documentation from the Postal Service appears to indicate that notice
 11 of the letter was left at Plaintiff's residence on February 5 and February 15, 2007 before the
 12 letter was returned to BLM on February 26, 2007. (Id.)

13 Although Plaintiff was not represented by an attorney when she filed her First
 14 Administrative Claim, on March 2, 2007 BLM sent a copy of the denial letter to Michael Avila
 15 of the Avila & Peros firm because he was the attorney representing the Estate of Kyle
 16 Przysiecki and might be in contact with Plaintiff. (Reynolds Decl., ¶ 4; Denial Letter with
 17 Notation of Mailing to Attorney, Exhibit 3 to Reynolds Decl.) BLM has no record of any
 18 communications from Mr. Avila in response to the letter. (Reynold Decl., ¶ 4.)

19 On December 21, 2007, BLM received a Second Administrative Claim from Plaintiff
 20 which was presented to BLM by the Avila & Peros firm on Plaintiff's behalf. (Reynolds Decl.,
 21 ¶ 5; Second Administrative Claim, Exhibit 4 to Reynolds Decl.) Plaintiff filed this suit on July 1,
 22 2008. (Complaint, Clerk's Docket No. 1.) BLM did not act on the Second Administrative Claim
 23 prior to the filing of this suit. (Reynolds Decl., ¶ 5.)

24
 25
 26 ²(...continued)
 27 in that action. (See Motion to Join as Intervenor, Case No. 07cv0039, Clerk's Docket No. 46,
 28 pp. 6-7.) Presumably, the conflict was the same reason the Avila & Peros firm did not
 represent Plaintiff when she filed her First Administrative Claim. However, the Avila & Peros
 firm did file a Second Administrative Claim on behalf of Plaintiff which BLM received on
 December 21, 2007. (Reynolds Decl., ¶ 5; Second Administrative Claim, Exhibit 4 to Reynolds
 Decl.)

III.

PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED

A. PLAINTIFF'S FTCA CLAIMS MUST BE DISMISSED DUE TO THE COURT'S LACK OF SUBJECT MATTER JURISDICTION

The United States, as sovereign, is immune from suit save as it consents to be sued. United States v. Dalm, 494 U.S. 596, 608 (1990); United States v. Mitchell, 445 U.S. 535, 538 (1980); Quarty v. United States, 170 F.3d 961, 972 (9th Cir. 1999). The right to sue the United States can be acquired only by specific consent of Congress; and the terms of such consent narrowly define a district court's jurisdiction to entertain suit on any given matter. FDIC v. Meyer, 510 U.S. 471, 475 (1994); United States v. Sherwood, 312 U.S. 584, 586-87 (1941).

A jurisdictional prerequisite to suing the United States in tort is the filing of an administrative claim with the appropriate federal agency, as required by 28 U.S.C. § 2675(a). Brady v. United States, 211 F.3d 499, 502 (9th Cir. 2000); Cadwalder v. United States, 45 F.3d 297, 300 (9th Cir. 1995). The administrative claim must be presented to the agency within two years of the claim's accrual. 28 U.S.C. § 2401(b). Once an FTCA claim has been presented, the involved federal agency has six months to act. See 28 U.S.C. § 2675(a). A claimant can file suit under the FTCA only after the agency denies his claim in writing or, in the alternative, after the agency fails to make a final disposition of the claim within six months. Id. If the agency does not act within six months, the claimant may deem the agency's silence to be a final denial. Lehman v. United States, 154 F.3d 1010, 1013 (9th Cir. 1998).

There is a six-month statute of limitations for filing an FTCA lawsuit when an agency denies a claim in writing. 28 U.S.C. § 2401(b); Erlin v. United States, 364 F.3d 1127, 1130 (9th Cir. 2004). Specifically, a claimant must file an FTCA lawsuit within six months "after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented." Parker v. United States, 935 F.2d 176, 177 (9th Cir. 1991). A district court does not have jurisdiction to hear a tort claim against the United States unless the claimant files a complaint in federal court within six months after the final agency decision. Goodman v. United States, 298 F.3d 1048, 1053 (9th Cir. 2002). Administrative exhaustion

1 requirements are jurisdictional and must be interpreted in favor of the United States because
2 they involve a waiver of sovereign immunity. Vacek v. United States Postal Service, 447 F.3d
3 1248, 1250 (9th Cir. 2006).

4 Here, Plaintiff filed her first administrative claim related to the death of her son on
5 January 19, 2007. On February 2, 2007, BLM denied the claim in a letter sent via certified mail
6 to Plaintiff's address of record. Plaintiff therefore had six months from the date of denial to file
7 her FTCA lawsuit. However, she did not file this case until July 1, 2008, approximately one
8 year and five months later. This was well beyond the six-month limitations period.

9 Plaintiff may argue that the six-month limitations period did not begin to run on
10 February 2, 2007 because she did not receive actual notice of the denial letter. Instead, the
11 letter was returned to BLM as "unclaimed." However, this argument is not consistent with the
12 statutory language of Section 2401(b) which does not require actual notice, but instead states
13 that an action must be instituted "within six months after **the date of mailing**, by certified or
14 registered mail, of notice of final denial of the claim by the agency to which it was presented."
15 28 U.S.C. § 2401(b) (emphasis added).

16 The Ninth Circuit also has held that actual notice of an administrative claim's denial is
17 not required to start the six-month limitations period for filing suit. In Berti v. V.A. Hospital, 860
18 F.2d 338, 340 (9th Cir. 1988), the Veterans Administration sent a letter denying a claim by
19 certified mail to a claimant's attorney. The letter was returned and marked "unclaimed." A
20 second letter was sent to a new address for the attorney. It also was returned and marked
21 "unclaimed." A third letter to the attorney finally was claimed. The plaintiff then filed an FTCA
22 action more than six months after the first unclaimed denial letter had been mailed. The
23 plaintiff argued that the six-month period began only when actual notice of denial was received,
24 not as of the date of the first unclaimed letter. The Ninth Circuit rejected this argument.

25 Section 2401(b) designates the date of the certified mailing as the
26 starting point for the six-month statutory period. Berti would have
27 this court impose the additional requirement that the mailing result
28 in actual notice to the claimant. Yet, in the face of clear statutory
language that begins the running of the statutory period from the
date of mailing of a certified or registered letter, Berti's request
would "enlarge that consent to be sued which the Government,
through Congress, has undertaken so carefully to limit."

1 [Citation.]... Accordingly, we refrain from adopting Berti's proposal,
2 and hold that the date of the initial mailing of a properly certified or
3 registered letter begins the six-month statutory period. Berti's
4 complaint, filed August 21, 1985, was thus untimely as it was filed
5 more than six months after December 7, 1984, the mailing date of
6 the V.A.'s first denial letter.

7 Berti v. V.A. Hospital, 860 F.2d at 340; see also Claremont Aircraft, Inc. v. United States, 420
8 F.2d 896, 898 (9th Cir. 1969) (date of certified mailing commences the six-month statutory
9 period).

10 Consistent with Berti, Plaintiff in this case had to file suit within six months of BLM's
11 February 2, 2007 denial of her claim. If Plaintiff did not receive actual notice of the denial, it
12 was not due to any fault on the part of BLM. The denial letter was sent via certified mail to the
13 address on Plaintiff's administrative claim. If this Court were to impose an actual notice
14 requirement, it would run contrary to the Ninth Circuit's holding in Berti that actual notice is not
15 required. Berti v. V.A. Hospital, 860 F.2d at 340. Furthermore, courts have held that the six-
16 month limitations period, established by Congress, must be strictly observed and exceptions
17 thereto are not to be implied. See, e.g., Claremont Aircraft, Inc. v. United States, 420 F.2d at
18 898. The period for filing an action is jurisdictional and subject neither to estoppel principles
19 nor to equitable considerations. Burns v. United States, 764 F.2d 722, 724 (9th Cir. 1985).

20 The fact that the six-month limitations period runs even when the claimant does not
21 have actual notice of the agency's written denial does not prejudice diligent claimants. This
22 is so because the law allows a claimant to file suit if the agency does not act on an
23 administrative claim within six months. 28 U.S.C. § 2675(a). As a consequence, a diligent
24 claimant can file suit after six months pass without a response from the agency whether or not
25 there has been a written denial. Alternatively, the claimant can inquire about the status of the
26 claim if there is no response within six months. In sum, diligent claimants are able to prevent
27 any prejudice to themselves in the event a denial letter does not reach them once six months
28 from the presentation of the claim have passed.

Finally, Plaintiff filed a second administrative claim on December 21, 2007. Plaintiff may
argue that even if she waited too long to file suit based on the date her first administrative

claim was denied, the second administrative claim allows her to start over with a new limitations period. However, this position is not supported by the law.

The issue was addressed in Willis v. United States, 719 F.2d 608, 613 (2d Cir. 1983). There, several plaintiffs filed administrative claims with the Postal Service but failed to file their respective FTCA actions within six months of denial of their claims. Plaintiffs then filed a second set of suits and administrative claims. They also requested the district court to deem the second set of administrative claims timely and proper. In an opinion authored by Judge Friendly, the Court of Appeals rejected the notion that plaintiffs could “start over” after failing to file suit within six months of the denial of their initial claims simply by filing additional administrative claims.

There is equally little force in the contention that plaintiffs could escape the consequences of their failure to bring suit within six months of the denial of their claims by filing new claims within the allowable two year period. If Congress mandated that suit be brought within six months after administrative denial of a claim, as we hold that it did, the bar cannot be avoided by starting all over again.

Willis v. United States, 719 F.2d at 613.

In this case, Plaintiff failed to file suit within six months of the denial of her first administrative claim. Similar to the plaintiffs in Willis, she could not simply start over by filing a second administrative claim. Accordingly, Plaintiff’s FTCA claims should be dismissed.^{3/}

B. PLAINTIFF’S 42 U.S.C. § 1983 CLAIM SHOULD BE DISMISSED

The United States is not a proper party to an action brought under 42 U.S.C. § 1983. Hindes v. Federal Deposit Insurance Corporation, 137 F.3d 148, 158-59 (3d Cir. 1998). By its plain language, the statute does not authorize redress against the United States. Davis v. United States, 439 F.2d 1118, 1119 (8th Cir. 1971). Federal agencies also are immune from suit under Section 1983 because Congress has not consented to such suits. See Gerritsen v. Consulado General de Mexico, 989 F.2d 340, 343 (9th Cir. 1993). Congress also has not

^{3/} The FTCA claims alleged in the Complaint are the First Cause of Action (Negligence), the Second Cause of Action (Premises Liability) and the Fourth Cause of Action (Wrongful Death).

1 consented to suit against federal agencies under Bivens.^{4/} See FDIC v. Meyer, 510 U.S. 471,
2 486 (1994). Based on the foregoing authority, Plaintiff's Section 1983 claim should be
3 dismissed.

4 **IV.**

5 **CONCLUSION**

6 For the foregoing reasons, the Complaint should be dismissed in its entirety.

7
8 DATED: August 28, 2008

KAREN P. HEWITT
United States Attorney

s/ Ernest Cordero, Jr.

9
10 ERNEST CORDERO, JR.
11 Assistant U.S. Attorney

12 Attorneys for Defendant
13 United States of America

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27 ^{4/} In Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S.
28 388 (1971), the Supreme Court established an implied private right of action against federal
officials for tortious deprivations of constitutional rights. Bruns v. National Credit Union
Administration, 122 F.3d 1251, 1255 (9th Cir. 1997). Bivens is the federal analog to suits
brought against state officials under 42 U.S.C. § 1983. Hartman v. Moore, 545 U.S. 1130, 126
S.Ct. 1695, 1700 n. 2 (2006).